

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMIE LEIGH JONES,
PLAINTIFF,

v.

H-07-CV-2719
HOUSTON, TEXAS
JUNE 20, 2011
8:38 A.M.

HALLIBURTON COMPANY D/B/A
KBR KELLOGG BROWN & ROOT
(KBR); KELLOGG BROWN & ROOT
SERVICES, INC.;
DEFENDANTS.
.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF:

Lannie Todd Kelly
Heidi Olsen Vicknair
The Kelly Law Firm PC
One Riverway
Suite 1150
Richmond, Texas 77056

Ron Estefan
Attorney at Law
One Riverway
Suite 1150
Richmond, Texas 77056

Stephanie Marie Morris
The Law Office of Stephanie M. Morris, PLLC
27 S. Darlington Street
West Chester, Pennsylvania 19382

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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1 A P P E A R A N C E S: (Continued)

2 FOR DEFENDANT KBR:

3 Joanne Vorpahl
4 Susan Cates
5 Blake Runions
6 Stephanie Holcombe
7 Daniel K. Hedges
8 Porter & Hedges
9 1000 Main Street
10 36th Floor
11 Houston, Texas 77002

12 FOR DEFENDANT CHARLES BORTZ:

13 Andrew T. McKinney, IV
14 Sharon Cullen
15 McKinney Cooper LLP
16 Three Riverway
17 Suite 500
18 Houston, Texas 77056

19 OFFICIAL COURT REPORTER:

20 Cheryll K. Barron, CSR, CM, FCRR
21 U.S. District Court
22 515 Rusk Street
23 Houston, Texas 77002
24
25

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21
22
23
24
25

INDEX

PAGE

PLAINTIFFS' WITNESSES

Jamie Leigh Jones

Direct Examination by Mr. Kelly 10

Cross-Examination by Mr. McKinney 71

- - - - -

08:18

1

P R O C E E D I N G S

2

THE COURT: Everybody had a satisfactory weekend?

3

4

Okay. I understand you-all want to talk to me briefly. Everybody may be seated. I'm going to get you-all trained yet.

08:38

5

6

MR. ESTEFAN: Probably by the end of the trial, yes, Judge. Right around there.

8

9

08:39

10

MS. VORPAHL: Judge, you got my -- I guess I'm just going to talk since everybody else is sort of gathering their thoughts. I requested that we might clarify for the jury at some point that leading questions are appropriate on cross-examination.

11

12

13

THE COURT: Done. Done. I'll take care of that.

14

MS. VORPAHL: Thank you.

08:39

15

16

MR. KELLY: Judge, the issue of -- and I know that this has been briefed again this weekend, but the issue of Charles Bortz' criminal history is something I would like to get into with Ms. Jones.

17

18

19

08:39

20

THE COURT: But neither one of them resulted in a conviction, right?

21

22

MR. KELLY: Well, one of them resulted in a plea bargain, your Honor, so he was --

23

24

THE COURT: He took anger management and it wasn't on his record any longer, right?

08:39

25

MR. KELLY: Again, your Honor, that may be; but

08:39 1 there's certainly things the average person can find on the
2 Internet and this goes more to -- I think Ms. Morris is more
3 prepared to argue this than I am. But it goes more to the
4 defense of the counterclaim than it does to --

08:39 5 THE COURT: The argument is that even though he wasn't
6 convicted, this was on the Internet and it diminished his
7 reputation before anything Ms. Jones did?

8 MR. KELLY: Okay. He was convicted?

9 MS. MORRIS: Yes.

08:40 10 MR. KELLY: First of all, he was convicted and well,
11 I'm going to let you guys argue. You-all are prepared more
12 than I am.

13 MS. MORRIS: Your Honor, the arrest in South Carolina
14 did result in a plea offer and he accepted and he pled guilty
08:40 15 to assault for a domestic -- it was a domestic violence related
16 assault.

17 THE COURT: On that particular point, let me hear from
18 the other side.

19 MR. McKINNEY: Yes. There's absolutely no evidence in
08:40 20 the record that it was a domestic violence related assault, and
21 it was a misdemeanor. We briefed all this. We've gotten the
22 records. They're on file with the Court. We furnished them to
23 opposing counsel.

24 The crime is punishable -- a maximum of 30 days
08:40 25 per the South Carolina statute. I was completely mistaken last

08:40 1 week. I thought it was in Florida, all this had happened in
2 Florida. It happened in South Carolina. The biggest point
3 here, however, is -- several -- several important points.
4 First, Ms. Jones has no personal knowledge whatsoever of any of
08:41 5 these events. And --

6 THE COURT: I'm concerned, Ms. Morris, with the
7 Internet carrying such a lot of invective, a large amount of it
8 unfounded. If we let everything that appears on the Internet,
9 under anyone's name, serve to diminish their reputation in a
08:41 10 defamation action, we're not going to have any defamation
11 actions left, are we?

12 MS. MORRIS: Your Honor, Mr. McKinney leaves out the
13 fact that Mr. Bortz, during his deposition, is the one that
14 told us about these arrests and convictions.

08:41 15 THE COURT: Well, that was good of him to do that.
16 That was very forthright, but I know we're in a new age now;
17 but defamation is reconceptualized after the Internet. It just
18 seems to me it has all sorts of mischief.

19 MS. MORRIS: Your Honor, if I may also address the
08:42 20 issue of whether it was a domestic violence related assault.
21 He also testified that it was his girlfriend who called the
22 police after he assaulted her and her shirt was ripped when the
23 police arrived. I do -- I did, just now, do a criminal history
24 check on South Carolina, because I thought it was Florida,
08:42 25 also, and I was trying to find documentation to prove his

08:42 1 conviction. And I just found that I can get that on South
2 Carolina -- from South Carolina.

3 THE COURT: I'm not going to allow it in yet. I'll
4 look more carefully at the law of defamation. But that seems
08:42 5 like a very hazardous policy, to say if your name is blackened
6 on the Internet you can't sue for defamation.

7 MS. MORRIS: I don't think that that's really what
8 we're arguing. We're arguing he had a reputation for violence.
9 That doesn't --

08:43 10 THE COURT: I know the same thing, though. His
11 reputation, you say, is a product of information on the
12 Internet that may be false.

13 MS. MORRIS: No.

14 MR. ESTEFAN: Not exclusively, Judge. Defamation is
08:43 15 one of those things that people frequently say my opinion -- my
16 neighbor's opinion of me went down because of whatever you're
17 saying and the people I interact with every day.

18 THE COURT: I understand.

19 MR. ESTEFAN: Well, being taken out of your home in
08:43 20 handcuffs in a police cruiser likely affects the neighbor's
21 opinion of you.

22 THE COURT: I know this isn't a criminal case; but the
23 notion that if you're arrested you're, therefore, guilty or if
24 you're arrested that you're, therefore, not worthy of a good
08:43 25 opinion.

08:43 1 MR. ESTEFAN: No, your Honor, but the counter position
2 is that Mr. Bortz comes in and says, I'm pristine and my record
3 was perfect.

08:43 4 THE COURT: He can certainly open the door. If he
5 opens the door of that, that will be entirely different; but I
6 don't want to put Ms. Jones in the position of arguing that
7 when we don't have better --

8 MR. ESTEFAN: Understood.

9 THE COURT: -- better evidence than we do right now.

08:44 10 MR. ESTEFAN: I understand, your Honor, the Court's
11 ruling.

12 THE COURT: The other question I understand is this
13 issue of the fact that she worked for Hooters --

08:44 14 MR. McKINNEY: It's out, Judge. We're not going to
15 put that into evidence.

16 THE COURT: Okay. Good.

08:44 17 MR. KELLY: There is one other issue, your Honor,
18 that's sort of related. We have the issue of Norman Chu
19 e-mails that we understand that KBR defendants at least want to
20 cross-examine Ms. Jones with. We believe it was excluded by
21 the Court's 412 ruling. It was -- Norman Chu was a friend of
22 Ms. Jones, if you recall her testimony. He sent a couple of
23 e-mails that could be read as more than being friends.
24 However, the e-mails themselves are, for one thing, hearsay;
08:44 25 and Ms. Jones has testified that they were no more than

08:44 1 friends. And it's certainly much more prejudicial than
2 probative.

3 THE COURT: You mean the correspondence from Mr. Chu
4 or the e-mails from Mr. Chu?

08:44 5 MR. KELLY: Yes, your Honor. We don't think they
6 should be -- they should be admitted at all. I think under 403
7 analysis, they'd be kept out but certainly under a 412 analysis
8 they'd be kept out.

9 THE COURT: Are you about to finish your direct
08:45 10 examination?

11 MR. KELLY: I have a couple of hours left, your Honor.

12 THE COURT: Well, then we don't need to take this up
13 till the next break. Let's not keep the jury waiting any
14 longer. And try to bring these things to me at the end of the
08:45 15 day, the previous day, rather than delay the jury in the
16 morning.

17 MR. KELLY: Your Honor, this was something that was
18 filed over the weekend.

19 THE COURT: That goes for both sides.

08:45 20 *(Jury present)*

21 THE COURT: Thank you. Please be seated. Everyone
22 enjoyed a good weekend. Welcome back.

23 Yes, you may take the stand, Ms. Jones.

24 And you may proceed, Mr. Kelly.

08:46 25 MR. KELLY: Thank you, your Honor.

1 JAMIE LEIGH JONES, PREVIOUSLY SWORN, CONTINUED TO TESTIFY:

2 DIRECT EXAMINATION

3 BY MR. KELLY:

4 Q. Jamie, when we left, you were about to be examined by
08:46 5 Dr. Schulz. Do you recall that?

6 A. I do.

7 Q. Do you remember that Kristen Rumba was some 10 feet behind
8 you?

9 A. Yes.

08:46 10 Q. So, the record from Kristen Rumba's notes --

11 MR. KELLY: It's Joint Exhibit 52, counsel. Is there
12 any objection?

13 MR. MCKINNEY: I'm sure we don't.

14 MS. VORPAHL: If it's a joint exhibit, we have no
08:47 15 objection.

16 MR. KELLY: Can we show that on the screen? Joint
17 Exhibit --

18 MS. VORPAHL: Excuse me. That says Exhibit 43.

19 MR. KELLY: Yeah, Joint Exhibit 52.

08:47 20 BY MR. KELLY:

21 Q. Jamie, I just want to direct your attention to the first
22 couple of words. Do you see where it says "20" and it's
23 scratched out and "22" is written on top of it?

24 A. Yes.

08:47 25 Q. Who is telling Kristen Rumba that you're 22?

08:48 1 A. Well, I started to say my story; but it was too emotional
2 for me. So, Pete Arroyo said that I was 22 and relayed the
3 rest of the information.

4 Q. Did you then correct the age?

08:48 5 A. I didn't even care at that point.

6 Q. It says in this record that you have been in the country
7 for two days. Did you see that?

8 A. Yes.

9 Q. How long had you been in the country?

08:48 10 A. Well, that would be the fourth morning.

11 Q. As you're standing in the examination room, Kristen Rumba
12 behind you, are you dressed?

13 A. Initially, yes.

14 Q. What happens, Jamie?

08:49 15 A. Let's see. I -- we were about to start the rape kit. So,
16 Dr. Jodi Schulz, she puts a blue, like, evidence collector
17 towel on the floor and she instructs me to stand on it. And I
18 had to take off all of my clothes, bra, underwear, everything;
19 and she collects it.

08:49 20 She asks me if that -- my clothes were the same
21 as the ones I had on the night before and the underwear and bra
22 were but not the outer garments. So, she collected the
23 underwear and bra. As I'm standing there, she took pictures of
24 the bruises.

08:49 25 Q. Let me ask you about that. Jamie, when she took the

08:49 1 pictures of the bruises, did she say anything to you?

2 A. She started taking the pictures; and after that, she
3 started collecting more evidence. She was scraping under my
4 nails and --

08:50 5 MR. KELLY: Can we put up Joint Exhibits 112 -- we'll
6 go with 112, first.

7 BY MR. KELLY:

8 Q. Do you recognize Joint Exhibit 112, Jamie?

9 A. Yes.

08:50 10 Q. And, Jamie, you've spoken to the media about your case,
11 right?

12 A. Yes.

13 Q. And I understand that you told the media you had severe
14 bruising?

08:50 15 A. Right.

16 Q. When I look at your bruise on your wrist, I don't see a
17 severe bruise. Can you tell me what you meant by "severe
18 bruising"?

19 A. I don't get bruises on wrists and in between my legs, on my
08:51 20 thighs, and all the locations where they were located, during
21 any everyday situation. And to me, the locations made them
22 severe, and the fact that they were part of what happened to
23 me. They -- the areas where they are sensitive, the inner
24 thighs, the wrist, but they're connected with a crime. And
08:51 25 when they're connected with a crime, it makes them severe to

08:51 1 me. Because those bruises weren't supposed to be there when I
2 woke up. And it was a severe situation, which made that severe
3 to me.

4 Q. After she takes these photographs, what happens next,
08:52 5 Jamie?

6 A. She starts scraping underneath my fingernails, collects
7 evidence. She tried to get any debris or evidence off my pubic
8 area and my scalp. She swabs inside of my mouth and --

9 Q. Does she have you lay back on the table?

08:52 10 A. I lay back on the table. I put my legs in the stirrups,
11 and she attempts to collect the evidence of my vaginal and anal
12 area with a swab. And it was so painful that she had to put
13 Lidocaine down there just to try to do the exam.

14 Q. Just to finish the exam?

08:52 15 A. Just to finish the exam, she had to put Lidocaine. Just
16 her touching that area hurt so badly.

17 Q. Did she say anything to you about what she's seeing?

18 A. She said that I was quite torn up down there and she goes
19 up to me and she looks me in the eyes and says, "I don't know
08:53 20 if you know this, but you were penetrated both vaginally and
21 anally.

22 Q. You had a surgery performed, a laser surgery performed
23 before you left, correct?

24 A. Yes.

08:53 25 Q. And I think you had told us you had been completely healed

08:53

1 before you got to Iraq?

2 A. Yes.

3 MR. McKINNEY: Excuse me, Judge. I believe what's on
4 the screen at this moment has not been produced.

08:53

5 MR. KELLY: It's the wrong exhibit.

6 THE COURT: The jury will disregard the immediate
7 prior exhibit.

8 MR. KELLY: That's not for -- this one's Exhibit 105,
9 Joint Exhibit 105.

08:55

10 BY MR. KELLY:

11 Q. Jamie, had you --

12 MR. KELLY: I had my numbers wrong, Judge. I
13 apologize.

14 THE COURT: Yes, sir. What number is this?

08:55

15 MR. KELLY: This is the one that we showed in the
16 opening statement, your Honor. I'm looking for the number.

17 Do we have the number on that?

18 THE COURT: Okay. Do the defendants agree this has
19 been admitted?

08:55

20 MR. McKINNEY: If it hasn't, it should be; but it's
21 part of a larger set of records.

22 THE COURT: Okay. All right. Let's proceed.

23 MR. KELLY: I thought it was Joint 105, your Honor.
24 Obviously I'm --

08:55

25 MR. ESTEFAN: It is 105. It's the third page of 105.

08:55 1 MR. KELLY: Okay. Third page of 105. Okay. My
2 apologies.

3 BY MR. KELLY:

4 Q. So, in the third page of Joint 105, Jamie, you see where it
08:55 5 says "very erythematous"?

6 A. Yes.

7 Q. Have you learned what that meant?

8 A. I believe that means red.

9 Q. Is that the way you were before this attack?

08:56 10 A. No.

11 Q. And if you look at the --

12 MR. KELLY: If you scroll down the page on that third
13 page.

14 BY MR. KELLY:

08:56 15 Q. How are you described --

16 MR. KELLY: Maybe on the next page. I apologize.
17 Maybe on the next page.

18 BY MR. KELLY:

19 Q. Dr. Schulz describes you. Do you recall how she describes
08:56 20 your demeanor, Jamie?

21 A. Guarded and shaking.

22 MR. KELLY: And on Jones Bates Stamp 000035, Bill.
23 Bates Stamp 000035. It's in the same medical record we just
24 looked at. That's the one.

08:57 25 BY MR. KELLY:

08:57 1 Q. It says in the lower portion that Dr. Schulz gave you
2 Lidocaine. Can you see what she gives you the Lidocaine for?
3 A. For abrasions.
4 Q. For abrasions. Did you ever tell Dr. Schulz in your own
08:58 5 words what had happened to you, Jamie?
6 A. No.
7 Q. Up in the upper right-hand corner, it says that there's no
8 history of STDs. She records no history of STDs. Do you see
9 that?
08:58 10 A. Yes.
11 Q. Did you talk to Dr. Schulz at all about your STDs?
12 A. No.
13 Q. Why don't you correct her when she writes "no STDs," Jamie?
14 A. I didn't even read this paper until after I filed a
08:59 15 lawsuit.
16 Q. When you lay on the exam table, Jamie, and Dr. Schulz is
17 performing the rape exam kit, do you learn whether blood was
18 ever found?
19 A. It was.
08:59 20 Q. Was there a lot of blood found?
21 A. By this time I had gone to the bathroom in the morning. I
22 had gone to the bathroom there. There wasn't a lot, but there
23 was some found.
24 Q. Was semen found?
08:59 25 A. Yes.

08:59 1 Q. Jamie, you've told us how you woke up in the morning and
2 you didn't remember quite a bit about what had happened the
3 night before?

4 A. Right.

08:59 5 Q. Had you had enough alcohol to account for that?

6 A. No.

7 Q. Did you know what had happened to your body?

8 A. When I woke up?

9 Q. Yes.

08:59 10 A. I was putting the pieces together. I was so sore all over.
11 I woke up naked, and I was figuring it out. I knew that I had
12 been raped.

13 Q. Did you know that you had been drugged?

14 A. Yes.

09:00 15 Q. How did you know that?

16 A. Because I didn't remember anything at all from the night
17 before and one of the firefighters -- and he handed me the
18 drink and said, "Don't worry, I saved all my ruffies for
19 Dubai," and I don't remember after I took that drink. I don't
09:00 20 remember what happened to my body.

21 Q. Was this the same firefighter that woke up in your room the
22 next morning?

23 A. No.

24 MR. KELLY: Can we put up Joint Exhibit 130 at Bates
09:00 25 Number 001613, please?

09:01

1

1613.

2

MR. MCKINNEY: What page is that?

3

MR. KELLY: 1613.

4

MR. MCKINNEY: Okay.

09:01

5

BY MR. KELLY:

6

Q. Jamie, do you recall back at Greenspoint Mall going through
a LOGCAP orientation?

8

A. I recall the LOGCAP orientation.

9

Q. Do you recall a warning about not using illicit drugs?

09:01

10

A. Yes.

11

Q. Among others it lists --

12

MR. KELLY: Let's turn the page to 1614. I believe
it's on the next page.

14

BY MR. KELLY:

09:02

15

Q. Among others, it lists benzodiazepines, right?

16

A. It does. On the first page it says not to buy these at
markets or bizarres.

18

Q. Jamie, as you're laying on the table in Dr. Schulz' office
and you said the pieces are coming back together, what happens
next?

09:02

20

21

A. Well, then I get dressed. And Dr. Schulz compiles

22

everything and puts it into the rape kit. And when she opens
the door, there was KBR security guards just pacing back and
forth. And she takes the rape kit and hands it to one of the

24

09:03

25

KBR and then the KBR -- I think it was Hultz, said, "Come with

09:03

1 me."

2 Q. Do you follow him?

3 A. Yeah.

4 Q. Where does he take you, Jamie?

09:03

5 A. Well, then he -- we get into an SUV and Hultz is sitting in
6 the front seat in the -- yeah, the passenger side and then
7 Steven Parnell was sitting in the driver's side. And the rape
8 kit was on Hultz's lap.

9 Q. Where do you think you're going, Jamie?

09:03

10 A. Well, they're saying, "What happened? We need to know
11 answers." And they were questioning me. And they were very
12 crass when they were questioning me.

13 And I say, "I don't want to talk about it right
14 now. I don't want to talk about this right now. I would like
15 to get some clothes."

09:04

16 And then they said, "We're not going to your
17 barracks. We're taking you somewhere else." And they kept
18 questioning and questioning.

19 Q. Where do they take you, Jamie?

09:04

20 A. We pull up and there's a container that wasn't around
21 anything else and I get out of the car and they immediately
22 come up behind me like they're surrounding me and they were
23 bigger guys. And I see the armed guards in front of me, and
24 they were dressed from head to toe in long sleeves, long pants.

09:04

25 It was probably like 112 degrees out. They had machine guns.

09:05 1 So, they're behind me; and they follow me to go
2 to the door. One of the guys with the machine guns opens the
3 door and I go inside and they close the door behind me.
4 Q. As you go inside, Jamie, describe once you're inside.
09:05 5 A. Inside it was a small bed to the right, and there's like a
6 bathroom area with a sink and toilet and possibly a shower.
7 Q. You say "possibly a shower." Did you use the shower?
8 A. No.
9 Q. Are you in there alone, Jamie?
09:05 10 A. Yes.
11 Q. What are you wearing at this time?
12 A. At this time I'm wearing a light shirt -- I don't have a
13 bra -- and some jeans.
14 Q. Dr. Schulz had taken your bra?
09:06 15 A. Yeah. I felt exposed.
16 Q. What do you do inside the trailer when you first go in?
17 A. At first I'm really sore. I'm in a lot of pain.
18 Everything hurts, and I lay down to gather my thoughts. I
19 didn't know what to do.
09:06 20 Q. What are you thinking?
21 A. I'm thinking that I want to be -- I'm in a foreign country.
22 I want to be at home with my family. I want to go get some
23 medical care. I'm hurting really badly. And as I'm laying
24 there, Jamie Armstrong comes in. Sorry.
09:07 25 Q. What does Jamie say to you?

09:07 1 A. She said, "I need a statement. You have got to give me a
2 statement. I need a statement. I need a statement right now."

3 And I said, "I don't want to talk about this
4 right now. I want some clothes. I want -- I want some food.
09:07 5 I want some water."

6 And then -- I'm sorry. She says, "You better be
7 careful because another girl was raped and she was buried over
8 here."

9 Q. That's what Jamie Armstrong tells you. That's what she
09:07 10 said. How does that make you feel, Jamie?

11 A. I'm scared to death.

12 Q. Who do you want now?

13 A. I want my dad. He's my protector.

14 Q. Why don't you just call him?

09:07 15 A. So, that's what I -- Jamie Armstrong leaves the trailer and
16 I go -- after she leaves, I go over to the door. I turn the
17 doorknob, and I try to push it open. It gets open about an
18 inch. All of the sudden it slams back on me.

19 And then I turn the doorknob again and I'm trying
09:08 20 to open it and it's not budging really and I'm getting freaked
21 out. Then I started banging on the door and I'm saying, "I
22 need out of here. I need a phone. I need to contact my dad.
23 I need help."

24 Q. Does anyone help you, Jamie?

09:08 25 A. After a long time of this, one of the KBR -- I mean, the

09:08 1 armed guards leaned in and he wasn't speaking English. He
2 wasn't speaking English. He was saying something in a foreign
3 tongue to me. And I was like, "I need to use the phone,"
4 (indicating).

09:08 5 Q. Did he give you one?

6 A. He handed me a phone. I contacted my dad. I told my dad,
7 "Dad, daddy, I've just been raped. I'm being held against my
8 will." I told him what Jamie Armstrong told me. I told him
9 that, "There was another girl that was raped that was buried
10 over here. I'm really scared."

11 He said, "Buddy, don't worry, I'm going to find a
12 way to get you home."

13 Q. Your dad calls you "Buddy"?

14 A. Yes.

09:09 15 Q. How long were you in that trailer?

16 A. I don't know. But every minute seemed like forever.

17 THE COURT: Do you want a break?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

09:09 20 THE WITNESS: Thank you.

21 THE COURT: Ten minutes or as long as Ms. Jones needs.

22 Would all rise for the jury, please.

23 *(Recess was taken from 9:09 a.m. to 9:21 a.m.)*

24 *(Jury present)*

09:21 25 THE COURT: Members of the jury, please be seated.

09:21

1 All right. You may resume.

2 MR. KELLY: Thank you, your Honor.

3 BY MR. KELLY:

09:21

4 Q. Jamie, you've just called your dad from a trailer in
5 Baghdad?

6 A. Yes.

7 Q. Tell us about your dad.

09:21

8 A. He was always an IT manager, and I just was always in awe
9 about the work that he would do on computers. He would bring
10 computers home that were broken and I would watch him fix it
11 and then when I got a little older, I was able to start fixing
12 the computers with him and that was our time to spend together.
13 And gave me a lot of the training to become an IT technician.
14 And I always just looked up to him.

09:22

15 Q. When did you first start joining your dad while he would
16 fix computers? How old were you?

17 A. Maybe 12.

18 Q. As you're sitting in this trailer, Jamie, where is your
19 father?

09:22

20 A. He's in Spring, Texas.

21 Q. Is he still living with your mother?

22 A. No.

23 Q. You mentioned earlier, Jamie, that you don't know how long
24 you were in that trailer. Can you give us an estimate now?

09:22

25 A. Well, now that I've seen some things, I know it was six

09:22 1 hours; but when I was in that trailer, every minute felt like
2 forever.

3 Q. I want you to look at an e-mail from the security manager,
4 Will Goodgine, to Gabe Andino. It's Joint Exhibit 55.

09:23 5 MR. KELLY: I believe it's Joint Exhibit 55.

6 BY MR. KELLY:

7 Q. Before you go into the body of the exhibit, can you see
8 what time that e-mail is sent? What time is that e-mail sent,
9 Jamie?

09:23 10 A. 7:59.

11 Q. And what does it say that you fear, Jamie?

12 A. Retaliation and retribution.

13 Q. Does it say that you're alone?

14 A. Yes.

09:24 15 Q. And turns the case over to the Department of State. Do you
16 see that?

17 A. Yes.

18 Q. Does anyone come into that trailer, after that e-mail is
19 sent, to talk to you again?

09:24 20 A. Jamie Armstrong.

21 Q. She comes in after that?

22 A. Yeah.

23 Q. What does Jamie Armstrong do at this point in time?

24 A. She tells me, "I need a statement from you. You've got to
09:24 25 tell me what happened. I need a statement."

09:24 1 And at this time I'm hurting worse and worse.
2 Whatever drug they gave me is coming off, and I'm hurting a lot
3 worse at this moment. I don't even want to deal with her, and
4 she's being so mean to me. And --

09:25 5 Q. Do you want to give her a statement?
6 A. No.
7 Q. Why don't you want to give her a statement?
8 A. I asked her, "So, is authorities involved? I want to give
9 authorities a statement. I want to give a statement to
09:25 10 something -- to somebody who was in a position to do something
11 about this."
12 Q. What does she tell you about that?
13 A. "I don't know of any authority involvement."
14 Q. She tells you that after this e-mail is sent?
09:25 15 A. Yes.
16 Q. Do you give her a statement, Jamie?
17 A. Eventually.
18 Q. How does that come about?
19 A. I try to bargain with her for a use of a phone if I
09:25 20 could -- if I give her a statement, will you let me use the
21 phone, will you go get me some clothes, get me some food.
22 Q. Does she make that deal?
23 A. It was to my understanding. I didn't get food or clothes
24 or anything from her. My mother remembers talking to her. And
09:26 25 I don't know if it was in that trailer.

09:26 1 MR. KELLY: I would like to put up Joint Exhibit 103.

2 MR. MCKINNEY: What is that last exhibit, please? I
3 just missed the number.

4 MR. KELLY: It was Joint Exhibit 55, and we're putting
09:26 5 up 103 now.

6 BY MR. KELLY:

7 Q. Jamie, what is this?

8 A. This was a statement I wrote in that trailer in Baghdad.

9 Q. When you wrote this statement, had you spoken with an
09:27 10 attorney yet?

11 A. No.

12 Q. How many people had you told what happened to you?

13 A. I told Pete Arroyo and I told my dad that I had just been
14 raped.

09:27 15 Q. Did you tell Pete Arroyo the whole story?

16 A. No.

17 Q. Had you told anyone the whole story?

18 A. No.

19 Q. Is this the first time you've told the whole story?

09:27 20 A. Yes.

21 Q. Jamie, if you would, I would like you to read your
22 statement into the record.

23 A. Okay.

24 "Yesterday when I got off work, I went to the
09:28 25 DFAC by foot and then" -- I can't really read it -- "went and

09:28 1 played guitar for little while. Then around 9:00 o'clock p.m.,
2 I ran into the firefighters outside and talked to them for a
3 little while. I'm not sure how long. I had a drink with me.

4 Then I went home and laid in my bed. Then one of
09:28 5 the firefighters called and asked why I left and to go back and
6 hang out with them. I finally did go back and hung out a
7 little while.

8 "Then they did offer me a drink, and I drank it.
9 And one of the firefighters said, 'There's no Rohypnol in this
09:28 10 drink or anything,' and laughed. He seemed as though it was a
11 joke. Then he said, 'I'm saving my ruffies for Dubai.'

12 "After that I have no memory of the night. The
13 last thing I remember was being downstairs with the
14 firefighters."

09:29 15 Q. Jamie, off to the side there's a little note and I think
16 some of it is cut off; but do you know what that says?

17 A. It says, "Jamie has no idea how long she was downstairs,
18 anywhere between 30 minutes and two hours."

19 Q. Was that your handwriting?

09:29 20 A. No.

21 Q. Whose was that?

22 A. Jamie Armstrong.

23 MR. KELLY: Let's go to the second page.

24 BY MR. KELLY:

09:29 25 Q. Can you continue reading on Page 2, Jamie?

09:29 1 A. Yes.

2 "When I woke up this morning, one of the
3 firefighters was in my room and I was naked. I had two bruises
4 on my thighs, one on my wrist, and a scratch on my stomach and
09:30 5 bruises on my legs. I don't remember what I talked about to
6 the firefighter in the morning. I was still disoriented.

7 "The only thing I do remember was asking if he
8 had sex and was it protected and he said that he had
9 unprotected sex. He walked me outside for work. I was so
09:30 10 shocked that I couldn't even see straight. My friend, Pete
11 Arroyo, took me to work in his car. I don't remember what all
12 Pete and I talked about this morning.

13 "Once I came to terms with what happened, I
14 called Pete and asked that he meet me at my office. I told him
09:30 15 that I felt as though I was raped and asked for advice. I knew
16 I could trust him, so he was the individual that I first
17 contacted. He then took me to the medic."

18 And then it says, "Jamie told me the following:
19 She asked me to" -- something -- "write this on her behalf.
09:31 20 "Five" -- something -- "and one was with girlfriend. The
21 firefighter in her room was Bortz. Bortz' roommate, in and
22 out. Jamie does not know where Bortz was when she woke up.
23 The first time she saw him was when she went back in the room.
24 Jamie was there, may have left.

09:31 25 "One guy with dirty blond hair went in and out,

09:31 1 got Jamie the drink, maybe the one that said that. Jamie told
2 the firefighters she was a neat freak and had bought a lot of
3 decorations, and they said they would check it out later."
4 Q. Jamie, I notice that the name was Bortz, not Charles Bortz.
09:32 5 Why is that?
6 A. I didn't know his first name.
7 Q. Let's look at the third page.
8 A. "Additional statements. When I woke up, I felt as though I
9 was drugged. I was so dizzy I couldn't walk straight. I never
09:32 10 felt as though I had a hangover or anything. I also don't
11 remember how I met up with Pete or where he picked me up. I
12 also don't remember getting ready for work."
13 Q. That was your statement before you had told it to anyone?
14 A. It was.
09:33 15 Q. After you made that statement to Jamie Armstrong, did she
16 get you the food, water, and clothes that you had asked for?
17 A. No.
18 Q. Jamie, do you wear a towel on your head when your hair is
19 wet?
09:33 20 A. No. I have long hair and even when I didn't have long
21 hair, my hair tangles really badly, so I can't do that.
22 Q. After Jamie Armstrong takes the statement, does she leave?
23 A. Yes.
24 Q. Who is the next person you see?
09:33 25 A. The next people I saw was the State Department.

09:33

1 Q. Do you remember their names?

2 A. I'll always remember their names. It was Heidi McMichael
3 and Matthew McCormack.

4 Q. Did they say anything to you when they came in that
5 trailer?

6 A. Well, I asked how they knew where I was and they said that
7 Congressman Poe's office called, because from what I knew,
8 Jamie Armstrong said no authorities were going to be involved.

9 Q. And when they came in that trailer and told you that

09:34

10 Congressman Poe had sent them --

11 A. Yes.

12 Q. -- how did that make you feel?

13 A. Relieved.

14 Q. Relieved why?

09:34

15 A. Because now I could get out of there, I could get out of
16 that trailer, I could go home. I was hurting pretty badly. I
17 knew I needed to go and see someone.

18 Q. Did you have a bra on yet?

19 A. No. And I had a light T-shirt on, and I was feeling pretty
20 exposed.

09:35

21 Q. Had anyone brought you anything from your room?

22 A. No. Now, when the State Department came, Heidi McMichael
23 went and got me some clothes.

24 Q. From your room?

09:35

25 A. My room.

09:35

1 Q. Did you get to eat?

09:35

2 A. They took me to the DFAC because I was so hungry. And I
3 remember eating a kiwi. And I remember Yan -- I think his name
4 is Kempsta -- met us down there. And he was an agent. And he
5 was talking to my mom on the phone and said, "I'm here with
6 Jamie. We're making sure she gets some food. We're taking
7 care of her."

09:36

8 Q. Did you have any feeling about Ted Poe, about getting you
9 out of that trailer, Jamie?

10 A. Ted Poe is my hero. I named my first-born daughter after
11 him. Her name is Anabelle Lilly Poetry Daigle.

12 Q. "Poetry" is after Ted Poe?

13 A. Yes, because she probably wouldn't be here if it wasn't for
14 him.

09:36

15 Q. Where do the agents take you after they took you to eat,
16 Jamie?

17 A. They took me to the State Department side. And Heidi
18 McMichael stayed the night in my room with me, and she had a
19 gun with her. And I couldn't sleep. I cried all night. So,
20 in turn, she couldn't sleep.

09:36

21 So, the next day she took me to go see a State
22 Department psychiatrist, to get me Ambien to sleep. And she
23 was very nice. She was reading, like, a book on crime, like, a
24 novel; and she was talking to me about it, trying to take my
25 mind off of what had just happened.

09:37

09:37 1 Q. Did you ever talk with anybody from KBR again?

2 A. Yes. When I was in Baghdad, I had written an e-mail that I
3 had been raped and several people from KBR called that I worked
4 with in Houston and asked if I was okay.

09:37 5 Q. What about before you left the country, Jamie, did you talk
6 with anybody from KBR before you left Baghdad?

7 A. Yes. On the 29th, there was a meeting and Gabe Andino and
8 the KBR security manager was in the meeting and I made sure I
9 had the State Department officials with me in that meeting
09:38 10 because at that point I was scared to death.

11 Q. Jamie, you had -- in some of your public statements, you've
12 said that you were told to -- you could either stay and get
13 over it or that you could return to Houston and there would be
14 no guaranteed job. You made those statements public?

09:38 15 A. Right. And he said no guaranteed job back in Iraq or back
16 in Houston.

17 Q. Who made that statement?

18 A. Gabe Andino.

19 Q. That man over there (indicating)?

09:38 20 A. Yes.

21 Q. Did you know who made them before this trial started?

22 A. Do what?

23 Q. Did you know the person who made those statements before
24 this trial started?

09:38 25 A. No. I remembered because I saw his face.

09:38 1 Q. When you saw his face in this trial, you knew it was him?

2 A. Yes.

3 Q. How did you leave the country, Jamie?

4 A. I left via -- it's called a little bird. It's a

09:38 5 helicopter, and one of the -- Matthew McCormack, he went with
6 me; and KBR made sure they had an HR person go with me, too.

7 Q. When you say it's called a "little bird," is that like a
8 big military helicopter or is that something smaller?

9 A. No. It's tiny. We were at war, and the Black Hawks were

09:39 10 all out that day. And the little bird is a tiny helicopter.

11 Q. Jamie, when you're leaving on the little bird, who is going
12 with you?

13 A. Jamie Armstrong from HR and the State Department agent,
14 Matthew McCormack.

09:39 15 Q. Are you taking any of your personal belongings?

16 A. I have the one suitcase that Heidi McMichael packed from
17 the State Department.

18 Q. Are you taking your computer with you, Jamie?

19 A. No.

09:39 20 Q. Who has your computer?

21 A. KBR.

22 Q. This is the same computer that you sent your e-mails out
23 about what happened to you?

24 A. Yes.

09:40 25 Q. When you get home, Jamie, do you go and see any doctors?

09:40

1 A. Yes.

2 Q. What doctors do you see?

3 A. It took two weeks to get into Dr. Sabrina Lahiri, who is a
4 plastic surgeon. And she did my first surgery, and I wanted
5 her to evaluate my chest.

09:40

6 Q. Why did you want her to evaluate your chest, Jamie?

7 A. Because I was suffering a disfigurement from the rape in
8 Iraq. And it was hurting so badly, I needed someone to
9 evaluate it. And she told me that I would have to have a
10 reconstructive surgery and it would take several months to
11 heal.

09:40

12 Q. Are there any other doctors that you see, Jamie?

13 A. I saw -- I got several opinions on the chest. I got an
14 opinion from Dr. Ciaravino, who actually did do the first
15 reconstructive surgery. I'm in need of another one. And I
16 went to one of KBR's doctors, Dr. Eisenmann, who agreed I
17 needed a reconstructive surgery. And then I went to seek
18 therapy for my post-traumatic stress disorder.

09:41

19 Q. Okay. Let me slow you down a little bit. Did you -- when
20 you were back in that rape examination room, did you
21 specifically complain to Dr. Schulz about your chest?

09:41

22 A. I said I was hurting all over.

23 MR. KELLY: Let me show Joint Exhibit 91.

24 BY MR. KELLY:

09:42

25 Q. Jamie, when you got home, did you let anyone at KBR know

09:42 1 that your chest was injured?

2 A. Jamie Armstrong.

3 Q. And is this Joint Exhibit 91 the e-mail that you sent to
4 Jamie Armstrong to tell her that?

09:42 5 A. Yes.

6 MR. KELLY: If we could look at Joint Exhibit 168.

7 BY MR. KELLY:

8 Q. This is a letter from Dr. Lahiri to Ms. Falanga. Do you
9 know who Ms. Falanga is?

09:42 10 A. Special agent.

11 Q. Is she investigating your case?

12 A. Yes.

13 Q. This is written on August 23rd, 2005?

14 A. Yes.

09:43 15 Q. How long after you first saw her did Dr. Lahiri write to
16 Lynn Falanga?

17 A. Eight days later.

18 Q. And the last part of it there, Jamie, says, "This deformity
19 does not occur in the normal postoperative fashion in a breast
20 augmentation." Did Dr. Lahiri tell you that?

21 A. She was really angry when she saw my chest because she said
22 it was perfect before and it really angered her.

23 Q. You've -- in some of your public statements, Jamie, you've
24 said that you had a torn pectoral muscle, right?

09:43 25 A. Yes.

09:43

1 Q. Do you know whether you, in fact, had a torn pectoral
2 muscle?

09:44

3 A. Well, the whole anatomy there was really confusing because
4 they said that I had trauma to my pectoral muscle and I guess
5 that resulted in a torn fibrous tissue, which is right under
6 the muscle. And so, you know, it was -- it was just words,
7 schematics, I guess.

8 Q. You understand that a little better now?

9 A. Now.

09:44

10 Q. Jamie, have you ever said that you had ruptured breast
11 implants?

12 A. I've never said that.

13 Q. Has that been picked up by the press?

14 A. That has.

09:44

15 Q. Has there been some misunderstanding about that?

16 A. When you first took on my case, there was a
17 miscommunication between me and you and that's because I was
18 out in California and we had phone conversations and --

19 Q. And it was miscommunication between you and I?

09:44

20 A. Right.

21 Q. I want to apologize to you for that, Jamie.

22 Were your breasts ruptured?

23 A. They weren't ruptured.

24 Q. What happened to them?

09:45

25 A. They were disfigured. The way that I was attacked, pushed

09:45 1 on the top and they had fell down and out. So, they were
2 disfigured that way.

3 Q. And you've had one breast reconstructive surgery, you said;
4 and I think you told us you need another one?

09:45 5 A. Yes.

6 MR. KELLY: Okay. Could we put up Joint Exhibit 124,
7 please?

8 BY MR. KELLY:

9 Q. Jamie, can you tell us in your words why they needed
09:45 10 reconstructive surgery now?

11 A. Well, because they are pushed out and one nipple is a lot
12 further down than the other. And there's some rippling and it
13 looks a lot worse in person than it does on the picture.
14 But -- you know, when I first got the first reconstructive
09:46 15 surgery, I was excited to get the memory of Baghdad off of me.
16 And my husband knew how excited I was.

17 And, you know, we go to the doctor and they do
18 the surgery and I'm all bandaged up. All the way around they
19 have bandages. And I remember my mother came over because she
09:46 20 knew how excited I was to get those bandages off to try to give
21 some order or whatever.

22 But my husband and I go into the bedroom and he
23 takes the bandages off and I see his face and I knew that they
24 probably weren't just right yet. And he doesn't say anything.
09:47 25 So, then I go to the bathroom and I look in the mirror and I

09:47 1 start crying because it's still not right.

2 And I'm so excited to get the memory of the rape
3 off of me and it wasn't gone. And, yes, I can hide it in a
4 bra, I can hide it in a swimsuit top; but when I go to the
09:47 5 shower and I have to see in the mirror, why do I have to be
6 constantly reminded of it? I mean -- and, yes, I need a second
7 reconstructive surgery and it -- I just want the memory gone.

8 Q. You said you were diagnosed with post-traumatic stress
9 disorder?

09:47 10 A. Yes.

11 Q. Does the sight of your breasts being misshapen cause you
12 additional stress?

13 A. Absolutely.

14 Q. How many physicians have diagnosed you with post-traumatic
09:48 15 stress disorder?

16 A. Okay. Well, there was Don Nelson, James Paskowitz, Diana
17 Guest, Nicole Dockter, Dr. Deborah Young, Dr. Manguno-Mire,
18 Dr. Meisner initially. And there's another female doctor I
19 can't quite remember her name. So, eight or more.

09:48 20 Q. You said "Dr. Meisner initially." What did you mean by
21 that?

22 A. Well, as we came closer to this lawsuit, he changed his
23 diagnosis.

24 Q. Do you know why he changed his diagnosis?

09:49 25 A. KBR wanted him to.

09:49

1 Q. Had you testified about Dr. Meisner?

2 A. I did. He made me quite uncomfortable during his
3 evaluation of me because he was an adversary, he was trying
4 to -- I guess he was hired by them.

09:49

5 Q. Jamie, is Dr. Meisner the only physician hired by the
6 adversary, hired by KBR, that has said that you do, in fact,
7 have post-traumatic stress disorder?

8 A. There was another. Manguno-Mire said I have post-traumatic
9 stress; and they were hired by them as well, she was.

09:49

10 Q. Had you ever had any type of psychological treatment at all
11 before you went to Iraq?

12 A. Yes. My parents got a divorce. I took Ambien just a
13 couple of times, I believe. I took -- let's see. I think it
14 was Zoloft around eight times and Lamictal a few times, too.

09:50

15 Q. Prior to what happened to you in Iraq, Jamie, had you ever
16 been diagnosed with post-traumatic stress disorder, PTSD?

17 A. No. I don't believe so, not that I can recall.

18 Q. You remember an admission to a hospital where the doctors
19 questioned whether you might have had a psychosomatic episode?

09:50

20 A. Yes. It was a psychosomatic versus viral syndrome and that
21 was in 2002. So, that was 11 years ago. And --

22 THE COURT: I believe that's nine years ago, isn't it?

23 THE WITNESS: Oh, is it? Oh, I'm sorry.

24 BY MR. KELLY:

09:51

25 Q. I think that is.

09:51 1 A. Nine years ago. So, I was 17. I was a minor child and my
2 parents weren't getting very -- they weren't getting along.
3 They had just gotten a divorce within the last couple of years;
4 so, they were still having some issues. And during that
09:51 5 hospital stay, they were fighting and to out lash at my mother,
6 my dad said some unfavorable things about her.

7 Q. Let me just ask you this, Jamie. When they said
8 "psychosomatic" in your records, were you ever diagnosed with a
9 psychosomatic condition?

09:52 10 A. No.

11 Q. It was just something they were considering?

12 A. They were just considering it because of my parents'
13 behavior. And I went in the hospital with 102 fever, and they
14 just couldn't figure out what the illness was.

09:52 15 Q. In addition to being diagnosed with post-traumatic stress
16 disorder, Jamie, have you actually received treatment for
17 post-traumatic stress disorder?

18 A. I went -- I've been to therapy over 200 times now for PTSD.
19 And it's something that is a part of me now that I'm trying to
09:52 20 overcome.

21 Q. How frequently do you have to go now?

22 A. Now I go every two weeks. I live really far away. I live
23 in Cut and Shoot, and my therapist is in the Galleria area.
24 So, I go every two weeks.

09:53 25 And I'm also going to a psychiatrist who has

09:53

1 prescribed me Paxil and Xanax.

2 Q. What do the Paxil and Xanax do for you?

3 A. It helps desensitize me from the situation. It helps stop
4 the feelings of anxiety and hypervigilance.

09:53

5 Q. What is hypervigilance in your understanding?

6 A. Jumpy, scared to be around crowds, and things like that.

7 Q. How is it that you've managed to be around crowds and to
8 speak publicly if you suffer from hypervigilance, Jamie?

9 A. Well, I can do that if I have a family or friend with me.

09:53

10 They're my protectors, and I feel safe.

11 Q. Have you always had one of these protectors with you when
12 you have spoken publicly?

13 A. Absolutely.

14 Q. There's a man sitting outside in a room probably wondering
15 what's happening in here. Can you tell us about it?

09:54

16 A. My husband, Joseph Kallan Daigle. He is a great husband
17 and a fabulous father. I named my second born, who is four
18 months old now, Abigail Kallan Jo Daigle, after him.

19 Q. How did you meet him?

09:54

20 A. We met -- my mother -- I was living with my mother, and we
21 lived in the same apartment complex.

22 Q. Tell me when this happens. First of all, what time are we
23 talking about?

24 A. It was in 2006. I don't remember when exactly it was. But
25 it was an apartment barbecue. And at this point in time, my

09:54

09:55 1 mother had gone through great lengths to try to get me out of
2 the house. There would be days when I wouldn't even shower
3 because I was so depressed. She actually bought me a dog so
4 that I would take it for walks so that it would force me to go
09:55 5 out of the house.

6 So, she really wanted me to go to this barbecue.
7 And so, I went. And this guy, he just starts hitting on me;
8 and I was quite rude to him because I didn't want any kind of
9 attention from him. So I left. So, then my mother talks to
09:55 10 him for awhile and then she gets his phone number and has me
11 call and apologize.

12 So, I called at like 6:00 in the morning because
13 I didn't think he would answer and he did. And we became such
14 great friends and it took us awhile to start dating and then we
09:56 15 got engaged and then married.

16 Q. Jamie, did you -- were you dating Kallan when you had your
17 first breast reconstructive surgery?

18 A. Yes. We may -- we may have been engaged at that time. But
19 he was my caretaker. And I remember how humiliating it was
09:56 20 when I wasn't supposed to move my arms and he had to wipe me
21 when I went to the bathroom.

22 Q. This was your fiancé having to wipe you?

23 A. Yes.

24 Q. There's some photographs that I think some of the defense
09:56 25 lawyers are going to show you. Do you know what I am talking

09:56

1 about?

2 A. Yes.

3 Q. And these photographs are of you in sexy poses?

4 A. Yes.

09:57

5 Q. Tell me why you took those photographs, Jamie.

6 A. My fiancé and I -- or boyfriend, I don't remember if we
7 were engaged at the time; but we had broken up and I posted
8 them just to make him jealous. And we got back together.

9 Q. So, it worked?

09:57

10 A. Yeah.

11 Q. In the photographs, do you show the part of your breasts
12 that bother you?

13 A. No.

14 Q. You posted them you said. You post-them on MySpace?

09:57

15 A. Yes.

16 Q. Why MySpace?

17 A. Because he was my friend on MySpace and I knew he would
18 check it. And really I just wanted just him to see it and --
19 it's stupid. I was 21.

09:58

20 Q. Jamie, I'm reminded I have forgotten to ask you: Who is
21 Terri Scott?

22 A. Terri Scott, I saw her -- I think it was August 5th, when I
23 got back to Houston. And she was my OB-GYN who looked at me
24 down there.

09:58

25 Q. This is August 5th of 2005?

09:58

1 A. Yes.

2 Q. Is this the same doctor that had done the laser surgery on
3 you before you had left?

4 A. Yes.

09:58

5 Q. Same doctor that told you everything was fine right before
6 you left?

7 A. Yes.

8 Q. What did she find when she looked at you on August 5th
9 after you returned from Iraq?

09:58

10 A. She said I still had a laceration.

11 Q. You still had a laceration?

12 A. Yes.

13 Q. Did she give you any treatments, Jamie?

14 A. In regards to?

09:59

15 Q. In regard to that laceration.

16 A. No.

17 Q. When you left Iraq on the little bird, did you have to wear
18 body armor?

19 A. I think I wore a helmet. I think that the vest was in my
20 room still.

09:59

21 Q. At the time that you were in Iraq, Jamie, what was your
22 education level?

23 A. I had a few college hours, but really I just had the high
24 school diploma.

09:59

25 Q. What is your education level today, Jamie?

09:59

1 A. Well, after what happened to me, I just wanted to get an
2 understanding of human behavior and try to reach for some
3 answers as to what happened, maybe get some sort of closure.
4 So, I got my Bachelor's in Criminal Justice, with an emphasis
5 in forensics; and I wanted to become a component of the
6 criminal justice system.

10:00

7 And then, you know, I had the Jamie Leigh
8 Foundation, which helps victims. And to help the foundation
9 more, I decided to get my Master's in Business Administration.
10 So, I've got those.

10:00

11 Q. Tell me about the Jamie Leigh Foundation. Why did you
12 found it, Jamie?

13 A. Well, because I became aware that this is not an isolated
14 incident. And the Jamie Leigh Foundation, it's a 501(c)(3),
15 which is tax a deductible, non-profit organization. And we
16 help government contractors who become crime victims in the
17 Middle East. And I wanted them to have a refuge, somebody to
18 talk to when this happens to them.

10:00

19 Q. Doesn't KBR have something that they can turn to?

10:01

20 A. No.

21 Q. Have you assisted other victims, Jamie?

22 A. I've assisted a lot of other victims.

23 MS. VORPAHL: Your Honor, I object to this testimony.
24 And it was covered by the motion in limine. May we approach?

10:01

25 THE COURT: No, I think that's right. Let's move on.

1 BY MR. KELLY:

2 Q. Jamie, have you learned --

3 MR. KELLY: Your Honor, may I approach? It's a
4 tangential issue, and I don't want to offend the Court.

5 *(At sidebar with all counsel)*

6 MR. KELLY: I think it's different; but it is
7 tangential, your Honor. There's an issue about how she learned
8 of the secrecy of arbitration, and it's through helping other
9 women. And it directly affects the fraud in inducement to
10 arbitrate in her case. It's one of the ways that she learned
11 about the secrecy of arbitration. And so I would like to get
12 into that issue. And because it's tangential, I thought I
13 ought to approach.

14 THE COURT: Well, the secrecy of the arbitration
15 is -- I mean, can be identified in ways other than going
16 through how many victims she's helped, right?

17 MR. KELLY: I'm not going to ask her how many, your
18 Honor, which is actually, in fact, what I thought was covered
19 by the motion in limine. Not whether she's helped any. Not
20 whether she's helped any. But this is as far as I was going to
21 go. I was never going to ask her how many, because that's what
22 I thought actually was going to be covered by the motion in
23 limine.

24 MS. HOLCOMBE: This is it right here.

25 THE COURT: You can ask her just did, in the course of

1 her work with the foundation -- in the course of her work with
2 the foundation, did she learn that arbitration was to be
3 secret.

4 MR. KELLY: That's perfect, your Honor.

5 MS. VORPAHL: Your Honor, that's clearly hearsay. I
6 mean, what -- she learned it from somebody telling her.

7 THE COURT: This is a whole different argument.

8 MS. VORPAHL: Why go and have that argument in front
9 of the jury where it's hearsay. Clearly it's -- she's relying
10 on hearsay to say that.

11 THE COURT: Not necessarily. How did she learn? Did
12 somebody tell her? Or she looked at an arbitration agreement?

13 MR. KELLY: No, she learned by people telling her that
14 they weren't allowed to talk about it.

15 MS. VORPAHL: That's clearly hearsay.

16 MR. HEDGES: That's like triple hearsay.

17 THE COURT: Yeah, that is hearsay. We can't do that.

18 MR. MCKINNEY: Moreover, Judge, it's only secret if
19 it's done by agreement. You have to agree that it's secret;
20 otherwise, it's a public proceeding.

21 MR. KELLY: Actually, that's not true.

22 THE COURT: I don't have time to hear that one.

23 MR. KELLY: That's not true.

24 *(In open court)*

25 BY MR. KELLY:

1 Q. Jamie, were you specifically ever told, when you first
2 signed your contract with KBR, that arbitration would be
3 secret?

4 A. No.

5 Q. Did you hear Ms. Vorpahl stand up last week and say that
6 there was no secrecy in the arbitration agreement?

7 A. I heard that.

8 MR. KELLY: Can we see Joint Exhibit 137, please?
9 It's paragraph -- I'm sorry. It's on Page 002781. And I'm
10 highlighting Paragraph 5A.

11 Well, go up to 5A and B. I'm not sure. It may
12 have been in there and I just didn't see it.

13 In the top section, there, is what I want.

14 BY MR. KELLY:

15 Q. Who does it say can waive confidentiality?

16 A. Okay. This means that only the program, rather than any
17 individual disputant, may waive confidentiality.

18 Q. Stop you right there, Jamie.

19 As an individual disputant, is it pretty clear
20 that you couldn't waive confidentiality of arbitration?

21 A. Yes.

22 THE COURT: Does everybody understand what arbitration
23 is, or do you need -- everybody with us?

24 THE JURORS: (Nodding in unison)

25 THE COURT: Okay.

1 BY MR. KELLY:

2 Q. So arbitration was, in fact, secret?

3 MR. ESTEFAN: Your Honor?

4 THE COURT: Yes.

5 MR. ESTEFAN: I'm sorry to interrupt. One of the
6 jurors is indicating he's having trouble hearing.

7 THE COURT: That's my fault. I didn't switch the mic
8 back on. My apologies.

9 BY MR. KELLY:

10 Q. If you look at Paragraph 10, which I believe is on that
11 same page, is it clear that arbitration is the final binding
12 decision that will be made?

13 A. Yes. And it's the exclusive remedy.

14 Q. And what we're looking at, Jamie, was this ever explained
15 to you?

16 A. No.

17 Q. Did you have to do anything to avoid arbitration and face
18 this jury?

19 A. I had to do a lot.

20 Q. What did you have to do?

21 A. I went in front of Congress twice, the Senate once. I had
22 to go in front of the media --

23 MS. VORPAHL: Your Honor, at this time I would like
24 to, pursuant to Federal Rule 106, read the remainder of the
25 provision, because it really -- it's not a secrecy provision.

1 It's a provision that deals with subpoenas. So under the
2 doctrine of optional completeness, I would really like for the
3 jury to see the entire provision.

4 THE COURT: Your response?

5 MR. KELLY: I would like them to see the entire DRP,
6 your Honor. I mean, it's -- they have it in evidence. I don't
7 have any problem with that.

8 THE COURT: Okay.

9 MS. VORPAHL: The testimony has been completely
10 misleading. If you'll take a look, the entire provision reads,
11 for -- it's entitled "Confidentiality." And if we could go
12 back, sir, please, to the beginning of Paragraph 5, I would
13 just like to read the whole thing so that the jury understands
14 the entirety of Provision 5.

15 It reads, 5A: "The dispute resolution program,
16 which is called the program, its administrator, any subordinate
17 administrators, the staff of the program, and any other person
18 conducting conferences or serving as an impartial third party
19 on behalf of the program, in any in-house dispute resolution
20 process conducted under the auspices of the program, will hold
21 matters reported to the program and related communications in
22 confidence, in keeping with the standards of practice and the
23 code of ethics of the Ombudsman Association. The code of
24 ethics and the standards of practice of the Ombudsman
25 Association are incorporated into this plan by reference and

10:09 1 appended.

2 "For purposes of requests by or subpoenas from
3 any party that the program administrator or any subordinate
4 administrators or any member of the staff of the program or
10:09 5 person conducting conferences or serving as an impartial third
6 party on behalf of the program in any in-house dispute
7 resolution process conducted under the auspices of the program,
8 provide testimony in any internal or external investigation,
9 administrative hearing or arbitration or litigation proceeding,
10:09 10 the confidentiality standards described in this section,
11 attached to the dispute resolution program rather than any
12 individual disputant. This means that only the program, rather
13 than any individual disputant, may waive confidentiality and
14 the program may only waive confidentiality even upon request or
10:10 15 subpoena by a disputant under circumstances consistent with the
16 Ombudsman Association code of ethics and standard of practice."

17 The B provision reads: "No employee shall be
18 subject to any form of discipline or retaliation for initiating
19 or participating in good faith in any process or proceeding
10:10 20 under this plan."

21 And that is the entirety of Section 5 of
22 Exhibit 137, Joint Exhibit 137.

23 THE COURT: Okay. Thank you.

24 BY MR. KELLY:

10:10 25 Q. After hearing that, Jamie, is it clear to you whether or

1 not you could testify after an arbitration openly?

2 MS. VORPAHL: Your Honor, I'm going to object to this
3 whole line of questioning. It calls for legal conclusions.

4 THE COURT: Well, all she can testify to is her
5 understanding. And you'll have an opportunity to controvert
6 her understanding when you do cross.

7 What was your understanding as to whether
8 arbitration was something about which your participation was
9 subject to the confidentiality requirement?

10 THE WITNESS: Well, now my understanding is that it
11 would be secret and binding and no chance for an appeal. And
12 it stacked in favor of big business.

13 THE COURT: Okay. That's enough. All right.

14 BY MR. KELLY:

15 Q. Jamie, you were telling us some of the things that you had
16 to do to defeat the mandatory binding arbitration provision.
17 And could you run through those again so we all make sure that
18 we've heard you?

19 A. I went to Congress twice, Senate once. I went in front of
20 the media just to make it public, what was going on.

21 Q. Why did you fight so hard to get your case in front of this
22 jury?

23 A. Well, I think that the very foundation of our Constitution
24 allows a trial by jury. I want to tell my story in front of my
25 peers, and let them decide the outcome of this case. I don't

1 want it in front of some arbitrator who they have repeat
2 business with. This is something that is important to me and
3 important to others.

4 Q. When you were back at Greenspoint Mall, Jamie, did they
5 tell you you were going to give up this right if you'd been
6 raped?

7 A. No.

8 Q. Did they tell you you were going to give up this right if
9 you had been sexually assaulted?

10 A. No.

11 Q. What were you told about arbitration?

12 A. I wasn't told anything. I was told to sign a contract.

13 Q. Did you ask about the risks you would face in Iraq?

14 A. It wasn't that -- I didn't even have to ask. It was during
15 a presentation I was told that it is more likely I would get in
16 a car accident here in the United States than anything happen
17 overseas working with KBR.

18 Q. Did you rely upon the representations made by those KBR
19 managers in signing that contract?

20 A. I had to.

21 Q. Did you rely upon those representations when you made your
22 decision to go to Iraq?

23 A. Yes, I did.

24 Q. Was there any mention during your orientation of sexual
25 assault on women in Iraq?

10:13 1 A. No.

2 Q. Was there any mention of rampant sexual harassment problems
3 in Iraq?

4 A. No.

10:13 5 Q. Prior to being in that trailer, Jamie, had you ever heard
6 of a rape victim being buried in Iraq?

7 A. No.

8 Q. Was there any mention to you when you were at Greenspoint
9 Mall that KBR would imprison people it viewed as troublemakers?

10:14 10 A. No.

11 Q. Was there any mention of sending complainers to more
12 desolate camps?

13 A. No.

14 Q. If you had been told any of those things, Jamie, would you
10:14 15 have gone?

16 A. No way.

17 Q. Why not?

18 A. Because they chose to not disclose these things so that you
19 would go. If they were open and disclosed it, I don't think
10:14 20 anyone would go.

21 Q. Since filing this lawsuit, Jamie, has anything been done to
22 enhance your PTSD?

23 A. Yes.

24 Q. What?

10:14 25 A. Well, I've noticed KBR following me on and off for six

10:15 1 years. And then they're not discreet about it. They'll use
2 KBR marked vehicles. And, to me, it feels like an intimidation
3 tactic.

4 Q. Have you been able to finally go back to work?

10:15 5 A. Yes. I started working at a Christian school, and I was
6 teaching school-age children. And then I taught at the
7 Christian school high school level. And, then, now I'm a
8 college professor.

9 Q. How is it that you were able to go back and teach in a
10:15 10 school environment with PTSD, Jamie?

11 A. I had to take medication. And I went initially to a small
12 Christian school where I would feel safe. And then it
13 escalated to where I would be able to become a college
14 professor. And they have security guards there. And my
10:16 15 husband toured me around the campus so that I would feel
16 comfortable for the first few days of my employment.

17 Q. Jamie, you introduced us earlier to your family. You told
18 us about Kallan, and you told us about Anabelle and Abigail.
19 And you told us how Anabelle was named.

10:16 20 A. Yes.

21 Q. You heard KBR's lawyers stand up and say that Ted Poe
22 didn't rescue you at all when they opened this case, didn't
23 you?

24 A. I heard that. I think it's absolutely ludicrous. They
10:16 25 know that he was the one -- his office was the one that got me

1 out of there.

2 Q. How does it feel, Jamie, to know that you have to go
3 through your life in excruciating detail to bring this lawsuit?

4 A. I feel very exposed. I feel like this furthers the
5 retaliation.

6 Q. Is this something you wanted to do?

7 A. No one wants this. But having my entire life exposed,
8 every bad thing I've ever done or every little inconsistency I
9 may have told, having that -- even my STDs shown to the world,
10 if -- if that's the only sacrifice that I have to make to make
11 KBR stop doing this to people, and so that the jury can decide
12 that they need to stop, then it will all be worth it.

13 MR. KELLY: I would like to show Exhibit 78. I think
14 this is Joint Exhibit 78.

15 Take that one down. I think it's the wrong one.

16 BY MR. KELLY:

17 Q. Jamie, you talked a little bit about the Jamie Leigh
18 Foundation.

19 A. Yes.

20 Q. How is the Jamie Leigh Foundation funded?

21 MS. VORPAHL: Your Honor, I'm going to object. Again,
22 this was covered by the motion in limine.

23 THE COURT: Yeah, let's move on.

24 BY MR. KELLY:

25 Q. Jamie, if this jury sees fit to punish KBR for what it's

10:19 1 done to you, what is it your intention to do with the funds?

2 A. All of it will go to the Jamie Leigh Foundation and help
3 these women.

4 Q. All of it?

10:19 5 A. All of it.

6 Q. There's a couple of things I want to touch on that kind of
7 back us up a little bit.

8 A. Okay.

9 Q. Did you report Eric Iler's sexual coercion of you to
10 anyone?

10:19 11 A. I did.

12 Q. To who?

13 A. I reported it to Frederick Heard, and he said that he would
14 take care of it. And he reported it to his boss and who I
10:20 15 believe to be Eric Iler's boss, Stan Young. I used their open
16 door policy.

17 Q. Did you hear Kara Hall testifying that it was against KBR's
18 rules for supervisors and subordinates to have sexual
19 relations?

10:20 20 A. Yes.

21 Q. After you reported what was happening with you and Eric
22 Iler, was Eric fired?

23 A. No. It wasn't even investigated.

24 Q. Did you hear Kara Hall testify that cohabitating or
10:20 25 spending the night with someone from the opposite sex in the

10:20

1 Green Zone was a terminable offense?

2 A. Yes.

3 Q. Was Charles Bortz fired?

4 A. No.

10:21

5 Q. You know that Charles Bortz filed a lawsuit against you
6 after you filed this lawsuit?

7 A. Yes.

8 Q. He says you slandered him, didn't he?

9 A. Yes.

10:21

10 Q. What does that mean to you?

11 A. I am appalled by it. He knows I didn't slander him.

12 Q. What does slander mean, Jamie, in your understanding?

13 A. Not tell the truth about someone.

14 Q. Are you telling the truth about what happened to you?

10:21

15 A. Absolutely.

16 Q. Have you been honest every time you've spoken publicly?

17 A. Yes.

18 MR. KELLY: Your Honor, could we take a quick break to
19 get an exhibit in order? I believe -- well, we need to get an
20 exhibit in order.

10:22

21 THE COURT: Okay. We'll take a 10-minute break,
22 please.

23 All rise for the jury.

24 *(Recess was taken from 10:23 a.m. to 10:33 a.m.)*

10:33

25 *(Jury not present)*

1 THE COURT: Okay. Let me ask for quiet. May I ask
2 for quiet, please?

3 Yes, sir?

4 MR. MCKINNEY: Apparently there's not an issue. My
5 apologies.

6 MS. HOLCOMBE: We do have an issue -- I'm sorry, your
7 Honor. I didn't know -- I'm sorry. It's a brief issue. It's
8 just with the exhibit they were looking for, your Honor.

9 THE COURT: Yes. Okay. Yes, ma'am.

10 MS. HOLCOMBE: We did have objections to it that we
11 have filed with the Court, and we would like to renew those
12 objections at this point.

13 THE COURT: Tell me what the exhibit is.

14 MS. HOLCOMBE: Your Honor, it's exhibit --

15 MR. KELLY: It's Plaintiffs' 78. I think I was
16 calling it Joint 78 earlier, your Honor.

17 MS. HOLCOMBE: And, your Honor, it's actually an
18 opposed Plaintiffs' Exhibit 78. KBR objects to this as
19 relevance under 401 and --

20 THE COURT: Please tell me what it is. I can't figure
21 this out.

22 MR. KELLY: It's a photograph taken by Ms. Jones, your
23 Honor, of KBR at her house.

24 THE COURT: I think you were speaking. So, go ahead.

25 MS. HOLCOMBE: Your Honor, we also object under

1 Federal Rule of Evidence 403. As you can tell in that picture,
2 that picture is highly unfairly prejudicial and misleading and
3 confusing. You cannot tell from this picture whose van is
4 there. You don't know if it's a neighbor's. You don't know if
5 it's anybody.

6 She's going to say that it's KBR, and the picture
7 does not speak that. Therefore, entering this picture into
8 evidence would be unfairly prejudicial to KBR and would leave
9 an improper inference for the jury when the picture does not
10 speak what Ms. Jones is about to testify about.

11 MR. KELLY: The photographer is on the stand, your
12 Honor. She's going to tell you what it is, what she saw, and
13 what she took a photograph of. It's not a great quality
14 photograph, I'll grant you; but it's not great quality because
15 she took it from a cellular telephone from a distance where she
16 felt safe.

17 THE COURT: Well, it's prejudicial if KBR has not, in
18 fact, been following her, if -- I mean, surely you know. Have
19 they or have they not?

20 MS. HOLCOMBE: Your Honor, it's not my understanding
21 that they have. However, I would say that I could go outside
22 and take a picture of a blue car down the street far away,
23 bring it into court and say, I know that it was Mr. Kelly's
24 car, and just someone would have to take my word for it, even
25 though you can't see Mr. Kelly in the car, you don't see any

1 reference to Mr. Kelly to the car. And that's essentially what
2 would happen here.

3 It would be unfairly prejudicial for Ms. Jones to
4 say that this white van carrying, I guess, a trailer maybe
5 behind it, is, in fact, a KBR car, when it doesn't say that.
6 For her to say that alone and then put a picture that doesn't
7 reference that is unfairly prejudicial.

8 MS. VORPAHL: And I will represent to the Court I just
9 communicated with Celia Balli, who is in-house counsel for KBR
10 who is responsible for this case at KBR. I will represent to
11 the Court that to KBR's knowledge, no one in a KBR truck has
12 ever followed Ms. Jones.

13 THE COURT: Has anybody in a different vehicle or by a
14 different mode ever followed her?

15 MS. VORPAHL: To my knowledge, absolutely not.

16 THE COURT: Well --

17 MR. KELLY: Well, your Honor, I think that's
18 cross-examination information. The other thing is I believe --

19 THE COURT: What makes Ms. Jones think this was
20 Halliburton or -- excuse me, KBR?

21 MR. KELLY: Well, this isn't the only time she's been
22 followed, your Honor. This is just the first time that she
23 pulled out the camera and took a photograph.

24 THE COURT: Taking this camera shot, what about it
25 makes her think it was KBR?

10:36 1 MR. KELLY: Well, first of all, it said "KBR" on the
2 side of the truck. We're hoping we can blow it up and get a
3 clearer resolution so that we can show that. However,
4 Ms. Jones will testify that the truck said "KBR" on the side.
10:36 5 She lives way out in Cut and Shoot, where there's no reason --
6 she lives on a back road. The only reason for KBR to have been
7 out where she was was to follow her.

8 THE COURT: We can play with the technical capacity of
9 our courtroom equipment; and if it does, with enhancement, show
10:37 10 it to be KBR, a KBR vehicle, it can come in. But this is
11 not -- this by itself is not probative of anything that I can
12 tell. It's not -- I can't allow this in without more. I
13 really can't.

14 MR. KELLY: Well, the "more," your Honor, would be the
10:37 15 photographer who took the photograph telling you what the image
16 is and that she --

17 THE WITNESS: No, I can pull up the color photo.

18 MR. KELLY: We may have a better quality, your Honor.
19 I was unaware we had a better quality.

10:37 20 MR. HEDGES: Your Honor, I think she's already
21 testified, correctly or incorrectly, that there was a KBR truck
22 out there and she saw it. That just doesn't --

23 THE COURT: Well, her testimony was much more explicit
24 than that. She said she had been followed for six years.

10:38 25 The reason she would introduce this photo would

1 be to enhance the testimony she's already given, right?

2 MR. KELLY: Well, it was -- yes, your Honor, I mean,
3 she had intended to testify about this photograph and the
4 problem was that I called it a joint exhibit. It was a
5 plaintiffs' exhibit, and it took us awhile to find it.

6 THE COURT: But this exhibit by itself does not
7 enhance her testimony. It really doesn't. It's just an empty
8 country road with a non-identifiable truck and van to one side.
9 If you can get a better resolution, I'll take another look at
10 it; but on this, I'm afraid not. I'm sorry, I'm afraid not.

11 May we have the jury come back in, please?

12 *(Jury present)*

13 THE COURT: Members of the jury, please be seated.

14 You may resume.

15 BY MR. KELLY:

16 Q. Jamie, when we were talking last week, you said something
17 about wanting to be sure before you said anything about Charles
18 Bortz raping you. Do you remember that?

19 A. Yes.

20 Q. You have spoken to the media on a number of occasions
21 about --

22 *(Tape playing)*

23 THE COURT: Sorry. I don't know what that was.

24 BY MR. KELLY:

25 Q. See, you've spoken to the media.

10:40 1 A. Yeah.

2 Q. And you have indicated that you believe you were gang
3 raped?

4 A. They came to that conclusion looking at all the evidence
10:40 5 that I had.

6 Q. Do you believe that you were gang raped?

7 A. Well, I was hanging around several firefighters. I was
8 handed a drink by one firefighter; and he said, "Don't worry,
9 there's no ruffies in this drink or anything. I'm saving the
10:40 10 ruffies for Dubai." And that was a different guy than the guy
11 that was in my room the next morning. So, I think it was more
12 than one.

13 Q. Does your level of injury make you think that it was more
14 than one?

10:40 15 A. Yes.

16 Q. Do you have any memory at all of more than one person?

17 A. I have a flashback.

18 Q. What does that mean when you say you have a flashback?

19 A. Well, it just means that it's just -- like a glimpse in
10:41 20 time. I don't have any memory, but there's one flashback.

21 Q. Have you ever been certain enough, Jamie, to file a lawsuit
22 against anyone except for Charles Bortz?

23 A. No.

24 Q. How certain are you that Charles Bortz raped you?

10:41 25 A. A hundred percent.

1 Q. I would like to show you these media clips, Jamie, that
2 apparently are the basis for this claim against you.

3 A. All right.

4 Q. Let's watch them together.

5 MR. KELLY: There's Bortz Exhibit -- I forgot the
6 number.

7 MR. MCKINNEY: 255.

8 MR. KELLY: 255. And I think they're coming in
9 without objection.

10 MR. MCKINNEY: They're my exhibit. I have no
11 objection.

12 MS. VORPAHL: And we have no objection, your Honor.

13 THE COURT: All right. Thank you.

14 Admitted without objection.

15 *(Tape playing)*

16 BY MR. KELLY:

17 Q. Brian Ross said "within a day." Was he right?

18 A. No.

19 Q. Did you give him that information?

20 A. No.

21 *(Tape playing)*

22 BY MR. KELLY:

23 Q. Brian Ross said on your fourth night in Iraq. Was it your
24 fourth night?

25 A. I think it was the third.

10:45

1 Q. Did you give him that information?

2 A. I don't know. I don't think so.

3 *(Tape playing)*

4 BY MR. KELLY:

10:48

5 Q. Did you use the phrase "so badly mauled"?

6 A. No.

7 Q. Did you say that you had been repeatedly raped --

8 A. No.

9 Q. -- anally and vaginally?

10:48

10 *(Tape playing)*

11 BY MR. KELLY:

12 Q. Jamie, you had said on this last clip and the one before
13 that they confirmed rape?

14 A. Uh-huh.

10:50

15 Q. We talked about Dr. Schulz' testimony earlier when she said
16 that she could confirm penetration?

17 A. Right.

18 Q. Why did you say that she confirmed rape?

19 A. Because it wasn't consensual. I was drugged with a rape
20 facilitation drug. So, it confirmed rape to me.

10:50

21 Q. So, it confirmed rape to you?

22 A. Yes.

23 *(Tape playing)*

24 MS. VORPAHL: May we approach, your Honor?

10:58

25 MR. McKINNEY: We probably need to approach so we

1 don't violate a ruling.

2 (At sidebar with all counsel)

3 MR. McKINNEY: I watched this a couple of weeks ago,
4 gave it to opposing counsel a couple of weeks ago, gave the
5 edited versions a couple of weeks ago with all exhibits and
6 whatnot. But as we're getting to this point, it occurs to me
7 that there probably is going to be a reference to the grand
8 jury, and I don't know how to fix that.

9 THE COURT: Do you know whether that's true or not?

10 MR. KELLY: I don't. I'm actually playing
11 Mr. McKinney's cuts, which he was nice enough to bring because
12 I didn't have mine. So, I'm actually playing a defense exhibit
13 right now.

14 MR. McKINNEY: Let me be clear for the record.
15 Exactly what's being played right now was produced two weeks
16 ago. The transcripts were produced two weeks ago, and the
17 transcripts are on file with the Court as marked exhibits.

18 THE COURT: Do you want to take the risk or not?

19 MS. CULLEN: Actually, your Honor, I have the
20 transcript. It does mention the grand jury in the record.

21 MR. KELLY: I don't think we need to keep playing it.
22 We've got pretty much what we need here; but, Judge, could I
23 get some sort of an instruction. I'm sort of being beat up by
24 objections here. Obviously, I'm offering it; but it was a
25 defense exhibit. Can we at least get an instruction to the

1 jury that it's not -- I looked wrong in front of this jury
2 enough.

3 MR. McKINNEY: I think the appropriate instruction --
4 I think an instruction is appropriate that there is a portion
5 of this offer that is dealt with by one of the Court's
6 evidentiary rulings and --

7 THE COURT: I can deal with that.

8 MR. McKINNEY: -- and nobody wants to put that in
9 evidence.

10 *(In open court)*

11 THE COURT: Ladies and gentlemen, let's stop for a
12 couple of brief instructions. The first is this: I've decided
13 that that exhibit just referenced -- I decided that the exhibit
14 just referenced should not come in. It's not the fault of
15 either lawyer. Neither lawyer did anything -- no, that's not
16 working either. Somebody cut off somewhere else.

17 MR. KELLY: The whole exhibit, I think it --

18 MR. McKINNEY: Judge, we're going to redact that
19 exhibit down. And could we form --

20 THE COURT: Do it right now or --

21 MR. McKINNEY: No, your Honor. Just -- but to conform
22 with the Court's rulings, we will redact the exhibit now.

23 THE COURT: But we're not using it right now, are we?

24 MR. McKINNEY: Correct.

25 THE COURT: That's all I'm saying.

11:01 1 MR. KELLY: What's been played we want to go ahead and
2 use it, your Honor.

3 THE COURT: What's already been played?

4 MR. KELLY: Right.

11:01 5 THE COURT: Okay. Well, that's fine.

6 MR. KELLY: Okay.

7 THE COURT: This still isn't working.

8 Okay. You have to turn on a button, which is way
9 beyond me.

11:01 10 Couple of instructions. First, I've decided not
11 to allow that exhibit, not because of anything that's been done
12 wrong by either attorney. There is a portion that's not
13 admissible under rulings I made prior to your appearing for
14 jury duty.

11:01 15 The second piece of lawyer advice I need to offer
16 is this. We've talked a little about leading questions; that
17 is, the idea that a question sometimes suggests the answer.
18 Those are generally strongly disfavored when a lawyer has his
19 own witness at the witness stand. However, there's no
11:02 20 objection to them, they're not looked upon unfavorably if an
21 attorney has a hostile witness on -- in the witness box. And
22 that we may have shortly. Not now, but we may have shortly.

23 But there's nothing inappropriate about leading
24 questions being used there. So, I want to tell you that just
11:02 25 so you don't think that our rules on admissibility here are

1 entirely arbitrary.

2 Does everybody understand what I said?

3 Thank you very much.

4 You may resume.

5 BY MR. KELLY:

6 Q. Jamie, those clips seem to have a lot of statements by
7 people that weren't you, in them.

8 A. Yeah. I think that's the nature of media sometimes.

9 Q. Have you learned anything about dealing with the media
10 through your time that you've spent with them?

11 A. Well, yeah. They add a lot of stuff that you don't say.

12 Q. In your fight to avoid the arbitration provisions, Jamie,
13 did you have to spend personal money?

14 A. Absolutely. I had to spend a lot of money.

15 Q. How much money do you think you had to spend personally to
16 fight the arbitration provision?

17 A. Probably around 30,000. And also I had to hire another
18 lawyer who had to help fight the arbitration provision.

19 Q. Another lawyer other than us?

20 A. Yes. And that would be, you know, 5 percent on top of what
21 your cut is and everything else. So --

22 Q. So, your expenses have increased as a result of having to
23 fight arbitration?

24 A. Yes.

25 MR. KELLY: Thank you.

1 THE COURT: All right. All right. We'll now hear
2 from defendants. I'm not sure which defendant wishes to
3 provide first.

4 MS. VORPAHL: Your Honor, Mr. McKinney will go.

5 THE COURT: Mr. McKinney. All right. Please be just
6 as open minded and just as attentive in the -- in receiving the
7 defendants' examination as you were in receiving the
8 plaintiffs'.

9 MR. McKINNEY: Just a minute or two to get set up,
10 please, Judge.

11 THE COURT: All right.

12 **CROSS-EXAMINATION**

13 BY MR. McKINNEY:

14 Q. Ms. Jones, good morning.

15 A. Good morning, Mr. McKinney.

16 Q. Well, to begin, you know who I am, who my client is?

17 A. Yes.

18 Q. And I hope you understand -- and please tell me if you do
19 or do not -- that these questions that I am going to ask you --
20 and there are going to be quite a few of them -- you understand
21 that these questions are necessitated by the charges you've
22 brought against my client. You understand that?

23 A. Yes.

24 Q. Ms. Jones, I'm going to ask you now if you recall at the
25 beginning of the case your attorney made an opening statement

11:05

1 and then I made an opening statement?

2 A. Yes.

3 Q. Do you recall me telling the jury that in my opinion what
4 this case was about was you, you and your life and the issues
5 in your life, how you see those issues and how others perceive
6 those issues, as well; do you recall that?

7 A. I recall you saying that.

8 Q. And also discussing how there would be evidence in this
9 case, medical records, police records, e-mails, statements, and
10 investigative reports which some people see things differently
11 than you do and you have explanations for that, correct?

12 A. Yes.

13 Q. Do you recall when I was speaking with Ms. Katz, we talked
14 about falsifiable and non-falsifiable statements?

15 A. Yes.

16 Q. And do you recall or do you know what a non-falsifiable
17 statement is?

18 A. Yes.

19 Q. Tell me what you -- what your understanding of a
20 non-falsifiable statement is --

21 MR. McKINNEY: Are you hearing me, folks?

22 BY MR. McKINNEY:

23 Q. Can you tell me, please, and tell our jury, please, what
24 your understanding of a non-falsifiable statement is?

25 A. Something that cannot -- a statement that cannot be

1 falsified.

2 Q. Well, actually, it's the opposite.

3 A. Oh.

4 Q. And so that we're on the same page, a non-falsifiable

5 statement is one that is made by someone that can neither be

6 proved nor disproved because there's no independent

7 corroborating or validating evidence.

8 A. Okay.

9 Q. Do you follow that definition?

10 A. Yes.

11 Q. Do you also remember me telling the jury on opening

12 statement that we would be looking at other things that have

13 happened in your life and how you perceive those things and how

14 other people perceive those things to see if those other events

15 in your life can give us guidance in understanding how you

16 perceive the events that you say happened in Iraq? Do you

17 recall that?

18 A. Yes.

19 Q. Shortly after you married your husband, the two of you --

20 or he joined the Navy; is that right?

21 A. Yes, he did.

22 Q. And he was stationed in San Diego?

23 A. Yes.

24 Q. And while he was stationed in San Diego, you lived with

25 him. Is that correct?

11:09 1 A. Yes.

2 Q. Do you have the exhibit notebooks in front of you?

3 A. No.

4 MR. ESTEFAN: I think they're behind her,

11:09 5 Mr. McKinney.

6 MR. McKINNEY: Judge, may I approach because we're
7 going to be going over a number of --

8 THE COURT: Yes. Yes, you may.

9 MR. McKINNEY: Thank you.

11:09 10 BY MR. McKINNEY:

11 Q. There's a lot here, Ms. Jones. I apologize.

12 A. Okay.

13 MR. KELLY: Your Honor, I think we need to approach.

14 THE COURT: No. This is about this testimony. We've
11:10 15 already covered that before.

16 MR. KELLY: I don't know that we had a rule on one
17 particular portion of one.

18 THE COURT: We did, too. This testimony is permitted.

19 MR. KELLY: It's not the testimony. It's the
11:10 20 documents I'm concerned about.

21 THE COURT: Documents?

22 MR. KELLY: There are documents that I don't know that
23 we got a ruling on, Judge.

24 MR. McKINNEY: Judge, I have the Court's -- we have
11:10 25 the record the Court made. And subject to redaction, which

1 most of the records I'm going to be talking about do not
2 require any redaction to conform with the Court's rulings, and
3 the others have been redacted.

4 MR. KELLY: Well, that may be. If he's not going into
5 certain documents, maybe there's not an issue.

6 THE COURT: All right.

7 MR. McKINNEY: We will not --

8 THE COURT: There are -- those looking for a space to
9 sit, there are seats that I think we can fit a few more bodies
10 in on both sides.

11 Alternatively, there is -- on this front bench,
12 the one just past the swinging doors, there is some space that
13 I'm sure the attorneys would not mind sharing with you.

14 BY MR. McKINNEY:

15 Q. Ms. Jones, please look in the deposition notebook --

16 MR. McKINNEY: And the exhibit is not to go up at this
17 time.

18 BY MR. McKINNEY:

19 Q. Please look in the deposition notebook under Tab 82,
20 please, ma'am.

21 A. Okay.

22 Q. And I'll be happy to assist you if you require any
23 assistance.

24 A. Okay.

25 Q. All right. And if you would kindly turn -- and you'll note

1 at the bottom of the page in the lower right-hand corner, there
2 are some Bates stamp numbers beginning with 000. Do you see
3 those?

4 A. Yes.

5 Q. If you would kindly turn to 878, please, ma'am.

6 A. Okay.

7 Q. Now, Ms. Jones, can you tell our jury before we go into
8 this document --

9 MR. McKINNEY: And, ma'am, if you could be ready to
10 put up 878, Bortz Exhibit 82 up. It's the third page, I
11 believe.

12 BY MR. McKINNEY:

13 Q. The documents I'm getting ready to ask you about involve an
14 incident that occurred in San Diego between you and your
15 husband, correct?

16 A. It was just a domestic dispute.

17 Q. Yes, ma'am. Specifically a domestic dispute that occurred
18 at the bowling alley there on the Navy base. Is that correct?

19 A. Yes.

20 Q. Actually, let's go to Page 879.

21 A. Okay.

22 Q. What we're going to do, Ms. Jones -- and by way of
23 background, this is a domestic dispute in which you accused
24 your husband of physically assaulting you, correct?

25 A. He did physically assault me, yes.

11:13 1 Q. Yes, ma'am. And what we're going to do over the next 15 or
2 20 minutes is review the different ways in which you reported
3 to various authorities and doctors what you say your husband
4 did. And we're going to start with Page 878, if you could drop
11:14 5 down to the narrative portion at the bottom of the page
6 beginning with "Origin."

7 A. Okay.

8 MR. McKINNEY: And highlight and enlarge --
9 actually -- there we go.

11:14 10 BY MR. McKINNEY:

11 Q. This is a very poor copy, and I apologize for that.

12 MR. McKINNEY: Yes, can you highlight that -- all of
13 that, please?

14 BY MR. McKINNEY:

11:14 15 Q. Let's read this together. I'll read it out loud.

16 A. Okay.

17 Q. "Origin: At about 2028 hours on Sunday 8 April, 2007, I,
18 Officer Pupp," P-U-P-P, "and Police Officer" -- I cannot
19 pronounce that last name -- "were dispatched to Building 772,
11:15 20 bowling alley, for a domestic dispute."

21 And then the next line refers to Victim's
22 "Statement"; and it states: "Jamie Leigh Daigle, dependent
23 wife, a/k/a Jamie Leigh Jones, army contractor, said to
24 Officer Mrogzka, quote, 'My husband hit me on the right side of
11:15 25 my face because he was angry and wanted to go home,'" period,

1 close quote.

2 Now, do you recall, Ms. Jones, sitting here
3 today, whether, in fact, you made that statement or whether the
4 officer, in some form or fashion, misunderstood you?

5 A. That was right.

6 Q. That is a statement you made to the officer?

7 A. Yes.

8 Q. Now, if we drop down a little bit into the middle -- I'm
9 not sure that I'm able to point this out to the jury, but in

10 the middle paragraph it states -- in the middle of the
11 paragraph it states that, "The staff reported that both the
12 victim and suspect" -- that would be your husband, correct?

13 A. Yes.

14 Q. -- "had been there drinking and bowling from around
15 1500 hours."

16 Are you familiar with military time?

17 A. Yes.

18 Q. So, that would be about 3:00 o'clock in the afternoon,
19 correct?

20 A. Yes.

21 Q. And this altercation was at 8:00 o'clock?

22 A. Yes.

23 Q. So, you and your husband had been drinking from about
24 3:00 o'clock until about 8:00 o'clock?

25 A. Okay.

11:17 1 Q. "Staff told me that" -- they have your husband down as
2 AMAN Daigle?

3 A. Airman.

4 Q. Pardon me?

11:17 5 A. It means airman.

6 Q. Airman Daigle. "Airman Daigle made an attempt to leave the
7 bowling alley. They began to get in a verbal conflict. Staff
8 personnel saw the female run out the south side door and the
9 male ran after her yelling. Mrs. Daigle came running in
11:17 10 through the north side door crying and screaming that
11 Mr. Daigle had hit her."

12 Is that, in fact, what happened?

13 A. When we had the altercation, at some point he dragged me
14 outside for us to discuss it.

11:18 15 Q. And I'm just asking you at this point. What the police
16 officers have recorded that the witnesses said is that you ran
17 out the door screaming, your husband followed yelling, and you
18 came back in screaming that you had been hit. And is that,
19 again, a --

11:18 20 A. I didn't come back in.

21 Q. Pardon me?

22 A. It was out in the parking lot.

23 Q. So, you did not come back inside the bowling alley?

24 A. I don't -- no.

11:18 25 Q. That you're able to recall?

11:18 1 A. Not that I recall, no.

2 Q. All right. "The acting watch commander" -- this is the
3 bottom three lines. "The acting watch commander, Police
4 Officer Schooley, arrived and spoke briefly with the two
11:19 5 officers" -- I still can't pronounce the --

6 THE COURT: We can all see it. That's okay. You
7 don't have to pronounce it.

8 Q. -- "the staff and both individuals. Schooley noticed the
9 victim had injuries, blood in both eyes. So, he requested the
11:19 10 federal fire -- he requested federal fire on scene. A. man
11 Daigle," Airman Daigle, "told Schooley he was not physically
12 hurt and declined medical attention. And I began speaking with
13 the two individuals," et cetera, et cetera.

14 Now, Ms. Jones, at the bottom --

11:19 15 MR. McKINNEY: Next page, right here, please.

16 Yes. Could you enlarge and highlight all that,
17 please?

18 No. Just the bottom three lines, please, of that
19 paragraph.

11:20 20 We're having an exhibit malfunction. We'll get
21 there in just a moment.

22 Can you make it a little bit bigger, please?
23 Well, perhaps that is as good as we can get.

24 THE COURT: Why don't you read it --

11:20 25 MR. McKINNEY: Yes. I'm getting ready to do that,

1 Judge.

2 BY MR. McKINNEY:

3 Q. Beginning shortly into the bottom of the third line,
4 there -- or the third line from the bottom, there is this
5 notation, quote: "Federal fire arrived and placed the female
6 victim in the ambulance. Federal fire told us the victim
7 claimed her husband hit her in the head with a baseball bat
8 earlier in the day. Federal fire transferred the victim to
9 Balboa Naval Medical Center."

10 Did you tell the ambulance attendants that your
11 husband had hit you with a baseball bat earlier in the day?

12 A. No.

13 Q. So, do you have any idea why this information would appear
14 in this report?

15 A. Because they saw that I had a mark on my face and they made
16 some assumptions.

17 Q. Well, you -- I don't mean to quarrel with you, Ms. Jones;
18 but in order for a statement such as this -- you claiming that
19 your husband had hit you in the head with a baseball bat
20 earlier in the day, in order for that to appear in these
21 records, you would agree with me that information would have to
22 come from somewhere?

23 A. Yeah, it had to come from somewhere.

24 Q. It would be hard -- but you're saying it did not come from
25 you?

1 A. Yes.

2 Q. Regardless of how it appears in this document?

3 A. Yes.

4 Q. Bortz 219, Ms. Jones, it will be in another notebook there,
5 you can see from the --

6 A. Okay.

7 Q. And, Ms. Jones, for your background understanding of the
8 process I'm going through, what I have done and what I am going
9 to do is I'm going to ask you about each record that exists
10 relating to this event in the apparent order in which people
11 saw you and took information from you.

12 A. Okay.

13 Q. So that we can see how that information is recorded over
14 time and perhaps something might change over time. Do you
15 understand what we're doing?

16 A. Yes.

17 MR. McKINNEY: If we could put Bortz 219 up on the
18 screen, please. And highlight the portion, first, the date up
19 at the top. Just highlight all of that, please, everything on
20 the screen, including down to the part where it says "Physical
21 Exam."

22 BY MR. McKINNEY:

23 Q. As you'll see at the top -- and this is a Pre-hospital Care
24 Report, which was the ambulance service that picked you up. Do
25 you see that?

1 A. Yes.

2 Q. And it's dated April the 8th, 2007.

3 A. Okay.

4 Q. Identifies you as Jamie Daigle, correct?

5 A. Yes.

6 Q. And the chief complaint is: "Patient presents with right
7 cheek pain and head trauma." Do you see that?

8 A. Yes.

9 Q. And that's what you told the ambulance attendants was the
10 problem?

11 A. You know, we just had a domestic dispute and --

12 Q. Understood. And I'm just asking you --

13 THE COURT: Let her finish her answer.

14 MR. McKINNEY: Sorry, Judge.

15 A. I just think this whole thing is kind of silly, but we --
16 when he was put --

17 THE WITNESS: Can I just say the whole story how it
18 happened?

19 THE COURT: Well, now, your lawyer will give you that
20 opportunity on cross.

21 THE WITNESS: Okay.

22 THE COURT: Let's just respond to Mr. McKinney's
23 questions now.

24 BY MR. McKINNEY:

25 Q. I think the question simply was: Did you, in fact, tell

1 the ambulance people that you had pain in the right cheek and
2 head trauma?

3 A. As a 22-year-old, I really doubt I said head trauma.

4 Q. All right. Under "History" -- and that's where -- and the
5 jury will come to see this time and time again. Under
6 "History," you understand from what you've learned in this
7 lawsuit that the history is where the doctor or the paramedic
8 or the nurse or whoever else might be -- you might be seeing
9 writes down what you tell them happened. You understand that?

10 A. I do.

11 Q. It states, quote: "We responded to a recreational/public
12 area and found the patient in a sitting position requiring
13 assistance to the stretcher in mild condition." Then he
14 identifies the building, "to find a 22-year-old female sitting
15 on a chair talking, complaints of right cheek pain and she
16 stated, quote, that she was sitting in the bar when her husband
17 suddenly struck her in the right cheek bone, close quote. No
18 loss of consciousness -- there was no loss of consciousness
19 associated with this event. The strong odor of ETOH was
20 noted."

21 You know that "ETOH" means alcohol?

22 A. Yes.

23 Q. "Patient was hysterical and obviously upset. No visible
24 injuries were present, no swelling, bruising, or lacerations
25 were noted." You were put on a gurney, loaded in the ambulance

1 and taken to the hospital, correct?

2 A. Yep.

3 MR. McKINNEY: Bortz 221. And if you could highlight
4 everything from "Chief Complaint" through the body of the
5 narrative down through "Past Medical History," please.

6 BY MR. McKINNEY:

7 Q. If we were to look at the top of the page, which we're not
8 going to do in the interest of time, it would reveal that you
9 were seen in the emergency room by a staff physician Commander
10 Brendon Gelford. Do you happen to remember that gentleman?

11 A. No.

12 Q. All right.

13 A. Not that I can recall.

14 Q. He notes --

15 MR. McKINNEY: If you could highlight that, please.

16 BY MR. McKINNEY:

17 Q. He notes that your chief complaint was assault and then he
18 writes down history of present illness. Again, this is where
19 the doctor writes down what you tell him. He states, quote:

20 "22-year-old female who presented to the emergency room
21 department with a history of being assaulted by her husband at
22 approximately 2000" -- which would be 8:00 p.m., correct?

23 A. Yes.

24 Q. -- "Sunday, 8 April, 2007. She changed her story a few
25 times and with me she reported initially that she was informing

1 her husband that she might have been pregnant and her husband
2 got very angry and started hitting her in the stomach and also
3 hit her on the right side of the face. She said she called the
4 police and they took her husband into custody and she was
5 brought to the emergency department."

6 She goes on to state, "She subsequently changed
7 her story and reported that she was at the bowling alley on the
8 base with her husband and her husband became very upset because
9 she was winning and started hitting her in the stomach and hit
10 her in the face on the right side. Police were called, and
11 again the husband was taken into custody."

12 Now, up to this point we have indications from
13 people who have spoken with you about a baseball bat, about
14 sitting in a bar and suddenly, for no reason, your husband
15 striking you in the face, you reporting to your husband that
16 you might be pregnant and him hitting you in the face and
17 kicking you in the stomach, and then, again, that you were
18 winning bowling and this angered your husband and he began
19 hitting you in the stomach and hitting you in the face. Now,
20 would you agree with me that this information had to come from
21 someone?

22 A. No one took the time to sit there and capture my entire
23 story. And when my husband and I argue, it's arguing over a
24 constellation of issues. So, when I'm hysterical and the
25 police just take my husband and he's my protector, then in

1 broken words and through crying and everything else they
2 probably didn't capture my entire story.

3 Q. All right. Is any part of what we've read so far except
4 the baseball bat something that you say was written down
5 inaccurately, incorrectly, made up, whatever?

6 A. He didn't kick me in the stomach. I was pretty clear that
7 he hit me.

8 Q. All right. Well, the part about informing your husband
9 that you might be pregnant and he got angry and started hitting
10 you, is that something you actually said to the doctor or is
11 that an assumption or a misapprehension or a mistake by the
12 doctor?

13 A. We had been trying to get pregnant for five months, and I
14 was telling him since I was a full-time student that I didn't
15 want to continue trying. And he took that as could have been
16 pregnant, I guess.

17 Q. So, you think you -- excuse me. So, you didn't tell the
18 doctor that you told your husband you were pregnant. What you
19 told the doctor was you told your husband -- if this makes any
20 sense -- it doesn't. So, I'm going to start over.

21 The doctor wrote down you told your husband you
22 were pregnant and that caused your husband to get mad and start
23 hitting you. But you did not say that to the doctor. Is that
24 what you are telling us?

25 A. I said -- I probably said we had been trying to get

11:33 1 pregnant for five months. You know, when you're hysterically
2 crying and you're trying to make sense of what someone is
3 saying and you write stuff down, I can't be held accountable
4 for what they wrote.

11:33 5 Q. Well, actually, also at the top of the page, if we look at
6 the time that you were seen by the doctor, it was about an hour
7 later?

8 A. Okay.

9 Q. Do you think you were still hysterical an hour later?

11:33 10 A. Oh, yeah.

11 Q. All right. And so, the part where the doctor also wrote
12 down that -- where you changed your story and you were winning
13 at bowling and that made your husband mad and he started
14 hitting you, is that something the doctor misunderstood from
11:34 15 you or is that something you actually told the doctor?

16 A. That was another part of our argument.

17 MR. McKINNEY: Let's go to Bortz 81, please.

18 BY MR. McKINNEY:

19 Q. And if we could look at the bottom paragraph --

11:35 20 A. I'm not there yet. Hold on.

21 Q. Okay. Sorry.

22 A. Okay.

23 Q. This is a note following -- by one of the investigators.

24 MR. McKINNEY: And if we could highlight from the
11:35 25 third paragraph -- right there, yes -- on down, please.

1 BY MR. MCKINNEY:

2 Q. If you'll note here, "The investigator spoke with the
3 doctor and the nurse who treated V. Daigle," which would be
4 "Victim Daigle," I believe. Victim Daigle -- "V. Daigle gave
5 them different accounts of what happened in different locations
6 where the incident occurred. The nurse informed DA there were
7 no signs of any injury to V. Daigle. DA did not observe any
8 visible injuries, and her eyes appeared to be bloodshot when
9 speaking with her."

10 I think there is a lab report, Ms. Jones -- and
11 tell me if you dispute this -- that shows that your blood
12 alcohol level was .259 or thereabouts?

13 A. I'm sure it was.

14 Q. All right. Now, as you can see here, the nurse is
15 informing the investigating officer that despite your
16 statements that you had been hit, there were actually no signs
17 of injury. Do you dispute that?

18 A. You know, it's just whatever you want to believe. Captain
19 Booney, on this same document, says that I had a mark on my --
20 bruise on my face and --

21 Q. Yes. That's in the upper paragraph. Let's go to that.

22 MR. MCKINNEY: We'll drop down. I'll just read it
23 into the record.

24 BY MR. MCKINNEY:

25 Q. This is where I think you're saying that Schooley stated

11:37 1 Victim Daigle was emotional and had what appeared to be blood
2 in her eyes and a bruise on her face. Schooley also said a bat
3 may have been used to strike Victim Daigle but could not verify
4 this.

11:37 5 A. That's probably where the bat came from.

6 Q. Okay. Now, if we look at Bortz Exhibit 84, we will learn
7 that as a result of these allegations, your husband was placed
8 under what we would call, in civilian life, a restraining
9 order, correct?

11:38 10 A. Yeah, a military protective order. Now, when you're in the
11 military and you get called on a domestic disturbance, the
12 military does MPO. I didn't file this MPO.

13 Q. Understood. Understood.

14 Your husband was under the MPO for about five
11:38 15 days, correct?

16 A. I don't think it was -- I think it was less. Do we have
17 the dates?

18 Q. Probably somewhere.

19 A. I think it was less than that.

11:38 20 Q. Let's go to -- make sure I have the right number here.

21 Do you remember Chief Petty Officer Diaz-Pelot?

22 A. What are you on?

23 Q. I'm just asking you right now if you remember that person.

24 A. If I could see the document, I might be able to remember.

11:39 25 Q. Sure. That will be Bortz --

1 THE COURT: Okay. We're -- apparently the jury is
2 having trouble hearing.

3 MR. McKINNEY: Sure.

4 BY MR. McKINNEY:

5 Q. That would be Bortz 83 --

6 THE COURT: Excuse me, try to pull the microphone
7 closer to you.

8 THE WITNESS: Can you not hear me?

9 THE COURT: Apparently some of them could not.

10 THE WITNESS: Sorry.

11 THE COURT: No. It's a continuing problem in this
12 courtroom. The acoustics are imperfect.

13 THE WITNESS: Okay. Is that better?

14 BY MR. McKINNEY:

15 Q. Bortz 83, Page 000974.

16 A. What page is that?

17 MR. McKINNEY: May I approach the witness, your Honor?

18 THE COURT: You may.

19 MR. McKINNEY: I may have given you the wrong --
20 probably gave you the wrong exhibit number.

21 THE WITNESS: That's okay. No problem. I can read it
22 from the screen.

23 BY MR. McKINNEY:

24 Q. I will do that more than once probably before we get

25 through this, and I appreciate you correcting me. I meant to

1 say Bortz 83. If I said 84, that's my mistake.

2 A. Oh, okay.

3 Q. We're looking at the bottom of the page, the last
4 paragraph; and you'll see the reference to CPO, which I believe
5 means chief petty officer, Diaz-Pelot.

6 A. (No response.)

7 Q. I'm just asking you if you remember Chief Petty Officer
8 Diaz-Pelot being involved in the investigation of your case?

9 A. Not really but I think -- isn't that who was talking to --
10 oh, yeah. I think I may have called --

11 Q. Let's just go over this. This is, by the way, part of the
12 State Department investigation, correct, this document that
13 we're looking at?

14 A. Yeah.

15 Q. Which you have read, have you not?

16 A. I have, uh-huh.

17 Q. And what we see here at the bottom of Page 29 of the report
18 is that the RA, the reporting agent, asked Chief Petty Officer
19 Diaz-Pelot what her interaction with the victim was throughout
20 this incident. "CPO stated that Joseph was ordered to report
21 to her office the following day. CPO Diaz-Pelot stated that
22 Sailor Daigle was very upset about the MPO because his wife
23 needed his support. He stated that he never hit her and that
24 she would say the same thing.

25 "Sailor Daigle stated that they had been drinking

1 and his wife was on medication for stress and she knew she
2 should not have been drinking but she was. Sailor Daigle
3 stated that his wife was involved in an incident in Iraq" --

4 MR. McKINNEY: Turn the page, please.

5 BY MR. McKINNEY:

6 Q. -- "but CPO Diaz-Pelot did not ask what the incident was,
7 nor did she ask what kind of medication his wife was taking.

8 "CPO Diaz-Pelot stated that she explained to
9 Sailor Daigle that the MPO would remain in place until the
10 FAP's investigation was completed. Sailor Daigle understood
11 and left her office. CPO stated that it was at this time that
12 victim started to call her and leave several messages asking
13 for the MPO to be removed."

14 Do you recall calling Chief Diaz-Pelot?

15 A. Yes.

16 Q. "RA asked CPO Diaz-Pelot if she could recall any specific
17 statements victim made. CPO Diaz-Pelot stated that she spoke
18 with victim on one occasion and in that conversation she very
19 clearly remembers her making the following statements."

20 MR. McKINNEY: Highlight those statements, please.

21 BY MR. McKINNEY:

22 Q. Quote, "Please remove the MPO. I really need my husband at
23 home."

24 Quote, "He never hit me," close quote.

25 Quote, "It was all my fault," close quote.

1 Quote, "I don't remember what happened," close
2 quote.

3 Quote, "I was really drunk," close quote.

4 Quote, "I was drinking on my meds, and I wasn't
5 supposed to be," close quote.

6 And finally, quote, "I have the ER report which
7 shows that I had no injuries at all," close quote.

8 Are those, each and every one, statements that
9 you actually made to Chief Petty Officer Diaz-Pelot?

10 A. I don't know what all I said; but I said whatever I could
11 to get him home, because he was my protector and he was -- I
12 needed him home. So, I retracted my statement.

13 Q. You fully recanted everything that you had said about your
14 husband?

15 A. Because I didn't want him in trouble and I wanted him home
16 with me and I wanted him to protect me against you-all.

17 Q. Well, Ms. Jones, other than ask you questions in this
18 courtroom with Judge Ellison present, have I ever done anything
19 to you ever in your life that you're aware of?

20 A. Not you.

21 Q. But back to my question, Ms. Jones, because what we appear
22 to have here is an instance of you making a variety of
23 allegations against your husband regarding assaultive behavior,
24 recanting those allegations in what appear to be very clear and
25 specific terms and now telling us that -- and the jury and the

11:45 1 Judge that the recantation did not happen and the assault
2 happened as recorded. Is that a fair statement?

3 A. You ask me -- can you --

4 Q. I will try.

11:46 5 A. Okay.

6 Q. What we have apparently is, in the first instance, you
7 making a variety of allegations or, recorded in a variety of
8 ways, allegations of your husband striking you and hitting you
9 in the stomach, et cetera, correct?

11:46 10 A. No one captured my whole story and I was pretty hysterical
11 and crying and that's the result.

12 Q. All right. So, it wasn't written down correctly in the
13 first place. You want us to understand that. Is that right?

14 A. Couple of parts. But when you're crying hysterically
11:46 15 because your husband gets taken, it's -- I don't know if they
16 could understand me, to be honest.

17 Q. All right. The statements that I read to you that Chief
18 Diaz-Pelot remembered --

19 A. Those were the next day.

11:46 20 Q. Yes. Did you actually make those statements?

21 A. I probably did. I said whatever I could to get him home.

22 Q. Understood. Now, while you were in San Diego, you were
23 seeing two counselors, correct?

24 A. Yes.

11:47 25 Q. Could you turn to Bortz 225, please?

11:47 1 A. Yeah. I'll catch up.

2 Q. We're in no hurry.

3 A. Okay.

4 Q. We're going to be looking at the entry on 4-11-07.

11:47 5 A. Okay.

6 Q. And this is from one of the doctors that you have told us
7 that has diagnosed you with post-traumatic stress disorder,
8 correct?

9 A. Yes.

11:48 10 Q. Dr. Guest?

11 A. Yes.

12 Q. Or Diana Guest, MFT. I guess she's not a doctor, but she's
13 a therapist?

14 A. Right.

11:48 15 Q. All right. And as you will see, on April the 11th of 2007,
16 you went to see Dr. Guest. You reported that you had a
17 difficult day with flashbacks and nausea and that you appeared
18 nervous, but there's no entry in Dr. Guest's records about the
19 incident that had taken place three days before. Is there some
11:48 20 reason why apparently you did not report that incident to your
21 therapist, Ms. Guest?

22 A. It's just -- I was there to deal with what happened in
23 Iraq, and I wasn't there for that.

24 Q. All right. Let's look at Bortz 226.

11:49 25 A. Okay.

11:49 1 Q. And these handwritten notes by your other treater in
2 San Diego, Nicole Dockter, which I'll be happy to show you the
3 complete records if you have any questions about that.

4 MR. McKINNEY: And let's highlight everything down to
11:49 5 4-18-02, between 4-13 and 4-18-02.

6 BY MR. McKINNEY:

7 Q. As you can see, this was a visit with Nicole Dockter on
8 April the 13th, 2007, five days after the assault in the
9 bowling alley. Do you see that?

11:49 10 A. Yes.

11 Q. And you told the doctor -- or you told your therapist that
12 you had had an anxiety attack on Sunday?

13 A. Uh-huh.

14 Q. Now --

11:50 15 THE COURT: You need to say "yes."

16 A. Yes.

17 BY MR. McKINNEY:

18 Q. You're aware that Sunday was actually the day that you had
19 had the domestic violence issue?

11:50 20 A. Yes.

21 Q. You went on to tell your therapist that Kallan had planned
22 something without telling you and that was your first time
23 apart. Do you see that?

24 A. Okay. The other --

11:50 25 Q. I'm just asking you right now, ma'am, if you see what is

1 written down there?

2 A. I see it, yeah.

3 Q. All right. Now, if I may ask you, why would you tell your
4 therapist that your husband had planned something without

5 telling you and it was your first time apart for that reason
6 and that that produced an anxiety attack, why wouldn't you tell
7 your therapist, well, the truth?

8 A. Kallan planned something without telling me; that was, he
9 planned on us going to the bowling alley. And he was taken
10 away. That was the first time that we had been apart over
11 there. And actually had my mother fly in from Houston to -- I
12 had my mother fly in from Houston so that she could be there
13 for me because I always needed someone to be there.

14 Q. Well, I understand that part. But -- and thank you for
15 that.

16 But if we look at Nicole Dockter's records,
17 doesn't it appear that you were not discussing a domestic
18 violence incident and your husband being arrested, rather it
19 appears that your husband made some sort of plans to be by
20 himself on Sunday and that, therefore, you were separated from
21 him and this produced an anxiety attack? Isn't that a fair
22 interpretation and construction of these records?

23 A. She was pretty careful with not putting a lot of personal
24 matters in the records because she knew the consequence.

25 Q. So, you think the doctor -- you're telling us you actually

1 told the doctor about the domestic violence incident but the
2 doctor did not record that accurately because --

3 A. I told her a little bit. I told her that Kallan had
4 planned something and we went to the bowling alley, we had an
5 altercation. It's our first time apart right now.

6 Q. All right.

7 MR. MCKINNEY: I'm about to change topics, your Honor.

8 THE COURT: Is this a suitable time for a lunch break?
9 That's fine with me. Let's try to be back here by 12:45.

10 Would all please rise for the jury.

11 *(Jury not present)*

12 THE COURT: Please be seated. You may step down.
13 Thank you.

14 We still have outstanding the issue of the State
15 Department report V98, and I hope you're not going to go into
16 it with her yet.

17 MR. MCKINNEY: Well, Judge, according to your
18 ruling --

19 THE COURT: You have to redact a lot of information.

20 MR. MCKINNEY: -- we need to redact the references to
21 the grand jury.

22 THE COURT: You have not done that yet?

23 MR. MCKINNEY: We have done that.

24 THE COURT: Could we see a copy at some point then?

25 MS. HOLCOMBE: Absolutely, your Honor.

11:54 1 MR. MCKINNEY: Judge, my intention with the witness is
2 to go into portions of the report; but at no time will any
3 reference to the grand jury be shown to the jury.

4 THE COURT: Well, I will look at it. We have some
11:54 5 other issues in this case, hearsay within hearsay. But let me
6 look at the redacted report before we spend any more time on
7 this. Anything further before we break?

8 MR. MCKINNEY: Judge, and I would like to move to put
9 Bortz 225 and 226 into evidence, please.

11:55 10 THE COURT: Any objection?

11 MS. VORPAHL: No objection.

12 MR. KELLY: No objection, your Honor.

13 THE COURT: Admitted.

14 MR. KELLY: Well, I take that back. As to 225, I
11:55 15 believe it needs to be redacted also.

16 MR. MCKINNEY: Is there a reference in there?

17 MR. KELLY: Yeah. I don't think you put it up on the
18 screen and so, I didn't need to get up; but I think there's a
19 reference to the grand jury in 225 --

11:55 20 THE COURT: We both agreed that needs to come out.

21 MR. MCKINNEY: Judge, all of our exhibits are offered
22 subject to redaction, we understand that.

23 THE COURT: All right. Thank you very much.

24 *(Recess was taken from 11:55 a.m. to 12:36 p.m.)*

12:36 25 *(Jury not present)*

1 THE COURT: Okay. We're going to go back on the
2 record.

3 There are three things to talk about. One of the
4 jury has sent a message that he would like to receive a list of
5 all the witnesses to be called the next day, in advance, so
6 they can keep track.

7 Secondly, I assume everybody has received --
8 Congressman Poe has filed a motion to quash the subpoena served
9 on him.

10 MR. HEDGES: We have not received the -- it's sitting
11 back on the computers at the office. What is the --

12 THE COURT: It's not unexpected. And they said they
13 would be willing to appear before the Court if possible, and
14 telephonically preferably. Their arguments are there are no
15 extraordinary circumstances that justify this extraordinary
16 remedy. The speech and debate clause of the U.S. Constitution
17 is an absolute bar. To the extent the subpoena seeks to compel
18 testimony with respect to Congressman Poe's legislative
19 activities, Congressman Poe is unlikely to have relevant
20 firsthand admissible testimony.

21 I really think -- I understand why this was done.
22 And to the highest and best traditions of the bar, we want to
23 make available evidence that can be useful. But I would --
24 well, plaintiff can have its day in court, certainly.

25 What kinds of things do you intend to ask

1 Congressman Poe about?

2 MR. KELLY: Actually, your Honor, if -- we were
3 notified -- this is kind of a related issue that may make that
4 Congressman Poe issue moot.

5 We were notified on Sunday morning by e-mail --
6 it was actually 9:40 Sunday morning. We were -- we received an
7 e-mail from Patty Chapman, who was working in Congressman Poe's
8 office at the time of this event.

9 THE COURT: Yes.

10 MR. KELLY: What we had intended to call Congressman
11 Poe for was to testify that he, in fact, did dispatch the
12 Department of State to get Jamie out of the trailer.
13 Ms. Chapman has informed us as of yesterday that she, in fact,
14 is the person who did that. I have an e-mail that will
15 indicate to the Court that we learned of her --

16 THE COURT: If you're abandoning your request for
17 Congressman Poe's presence, that takes care of that one.

18 MR. KELLY: If we can bring Patty Chapman, I have no
19 need for Congressman --

20 THE COURT: I don't know whether we can bring her or
21 not. But if you're --

22 Is she in Houston?

23 MR. KELLY: She is in Houston, your Honor.

24 THE COURT: That's fine with me to have her come
25 instead of Congressman Poe. This is the -- this is what I

1 received from Congressman Poe. You might hand that to -- okay.
2 Let's -- so, I'll grant his motion to quash.

3 MR. KELLY: Yes, sir.

4 MS. VORPAHL: Your Honor, so that you understand that
5 we're not agreeing that Patty Chapman is the right person to
6 come or -- I mean, her name has been in the file the entire
7 time. They could have gone and talked to her. It's clear what
8 her purpose is in coming here.

9 I just wanted to make sure that you understood
10 that.

11 THE COURT: We'll have an argument about whether she
12 can testify and it's admissible and all that.

13 MS. VORPAHL: All right.

14 THE COURT: But for now, I just want to deal with
15 Congressman Poe.

16 MS. VORPAHL: Very well. I just didn't want our
17 silence to be in any way a token of our --

18 THE COURT: Okay. The next issue is we're looking at
19 whether we can use the criminal history, if any, of Mr. Bortz
20 against him. There's no question that that's normally allowed
21 for mitigation of damages. However, Texas law -- well, there's
22 an issue of law, first, as to whether his reputation is so bad
23 as to be libel-proof, which would entitle plaintiff to summary
24 judgment. I haven't seen a motion enough to suggest he's
25 libel-proof.

1 Now, in terms of mitigating damages, Texas law
2 appears to provide that that kind of mitigation must be
3 pleaded -- or pled, as you prefer -- especially in an answer.
4 And I don't think we have special pleadings. At least for now
5 I can't let it in because of that.

6 Now, I'm willing to be educated about this state
7 law issue on special pleadings. But that looks like to be
8 the -- to be the linchpin.

9 Another thing about a legal libel-proof claim is
10 that doesn't go to the jury anyway. That's a decision for the
11 judge. And I've made my ruling. I don't think he's
12 libel-proof; that is, his reputation is not so bad that he
13 couldn't show that his character has been attacked and his
14 reputation is diminished.

15 Okay. I would like to get the jury back in here.
16 We can talk about these at the next break.

17 Are there interns here?

18 Oh, one more thing. I don't want anybody -- we
19 had this again this morning. I don't want anybody expressing
20 chagrin, surprise, dismay, dislike based on any of the
21 testimony. We heard some of that this morning. If you want to
22 stay in the courtroom, fine; but you must be poker-faced and
23 silent. We don't want any "amens" or anything like that on
24 anyone's testimony.

25 *(Discussion off the record)*

1 MR. MCKINNEY: I'm getting ready to go into an
2 exhibit, Judge, that requires further redaction. We have a
3 disagreement.

4 THE COURT: We'll take that up at the next hearing.
5 We can't redact it right now, can we?

6 MR. MCKINNEY: Well, it's my next exhibit with this
7 witness.

8 THE COURT: Okay. What's the issue?

9 MR. MCKINNEY: It's a 412 issue, if I can approach.

10 I agree that the next sentence needs to be
11 redacted, but the one highlighted does not because it's not
12 sexual conduct. It's an allegation of sexual harassment.

13 MS. MORRIS: Which exhibit?

14 MR. MCKINNEY: Oh, gosh. It's the psychosomatic
15 record.

16 MR. ESTEFAN: What page of it, Andrew, are you on?

17 THE COURT: You willing to redact the sentence that
18 begins "In addition"?

19 MR. MCKINNEY: Yes. The second sentence regarding the
20 purported aggressor's friend should come out. I agree with
21 that. The following sentence, however, refers to sexual
22 harassment, not sexual conduct.

23 THE COURT: That can come in.

24 Okay. Now, I want the jury to come in, please.
25 Everybody stand.

12:50 1 (Jury present)

2 THE COURT: Members of the jury, please be seated.

3 You may resume your inquiry.

4 MR. McKINNEY: May it please the Court?

12:51 5 BY MR. McKINNEY:

6 Q. Ms. Jones, if we could go, please, to the -- well,
7 actually, Ms. Jones, if you would please turn to page -- to
8 B153 in your notebook, we're going to begin with a new topic.

9 And while you're looking, Ms. Jones, I was
12:51 10 informed over the noon hour that both of us are speaking rather
11 softly, so I'm going to speak up. I don't mean to be rude.
12 And I ask that you try to elevate your voice as well.

13 A. Okay.

14 Q. All right. Do you recall, Ms. Jones -- we're not ready to
12:52 15 put up B153 at this moment.

16 Do you recall in your direct examination this
17 morning being asked about an episode of psychosomatic illness
18 versus a possible viral syndrome by your attorney?

19 A. Yes.

12:52 20 Q. And is Exhibit B153 the medical records that documents the
21 possible viral syndrome versus psychosomatic illness?

22 A. That was the record that we were referring to.

23 Q. All right. Now, can you tell the jury what your
24 understanding of a psychosomatic illness is?

12:52 25 A. Psychosomatic is -- it's often used when a doctor cannot

1 figure out a diagnosis for -- yeah.

2 Q. Well, do you understand that "psychosomatic" means that the
3 condition is one that is being imagined or pretended by the
4 patient?

5 A. It can mean that, yes.

6 Q. Now, if we look at the first page --

7 MR. McKINNEY: I would like to, at this point, your
8 Honor, move for the admission of B153, subject to the redaction
9 discussed off the record -- or outside the jury's presence.

10 MR. KELLY: No objection, your Honor.

11 THE COURT: Granted without objection.

12 MR. McKINNEY: If you could, under "Hospital Course,"
13 which I believe is right there, highlight, please, the first
14 five lines. And blow it up a little bit.

15 BY MR. McKINNEY:

16 Q. As you can see here, Ms. Jones, you presented at the
17 hospital with a history of the following issues in your life:
18 Hypercholesterolemia, endometriosis. And then for the last
19 several days you reported a history of fever, headache, neck
20 stiffness, photophobia, myalgias, and difficulty walking. Do
21 you recall telling the doctor that those were the problems that
22 you were having?

23 A. From what I remember, that's what I was having, yes.

24 Q. All right. Now, the balance of this paragraph here that's
25 not highlighted -- and we can read it in detail if necessary --

1 let me ask you: Have you read the balance of this paragraph
2 yourself?

3 A. I've read the whole document, yes, sir.

4 Q. All right. Then you know that the doctors ran a whole lot
5 of different tests on you, including a lumbar puncture -- that
6 is, an actual tap into your spinal fluid -- and found nothing
7 wrong with you. You know that?

8 A. It says possible viral syndrome, Mr. McKinney.

9 Q. Yes. It says that at the top. But if you look through all
10 of the testing -- and we can go through it line by line --
11 every bit of it came up negative. Do you agree or disagree
12 with that, based on your review of the document?

13 A. Well, I had a 102 fever, but it did -- we did run some
14 tests, and it didn't --

15 Q. Actually, if we look in the middle of the page here
16 regarding your fever, six lines up from the bottom of this
17 paragraph, "The max during her hospital stay had been a
18 hundred," referring to your temperature. Do you see that?

19 A. If you look at the entire medical record, there is a graph,
20 and it goes up to 102.

21 Q. All right. The next paragraph begins: "At this point, the
22 possibility of a psychosomatic manifestation of her multiple
23 psychosocial stressors was considered." And you understand
24 that's because they couldn't find anything wrong with you other
25 than a low-grade fever?

1 A. Yes, I understand.

2 Q. And the record goes on to state that when you were
3 confronted -- well, let me read it directly.

4 "When posed to the patient, she adamantly denies
5 any relation to her multiple stressors, which will be described
6 below. She was very resistant to my questioning in trying to
7 explore these areas and was seen on a social courtesy visit by
8 her usual psychologist, Dr. Robbie Burnett."

9 Now, as I understand it, Dr. Burnett is a woman?

10 A. Yes.

11 Q. And she was a psychologist that you were seeing at the
12 time?

13 A. Yes.

14 Q. And as I recall from your pretrial testimony, you would
15 either see Dr. Burnett by yourself or with your father?

16 A. Yes.

17 Q. And Dr. Burnett came out to the hospital to meet with your
18 physician regarding this stay because of your rather alarming
19 symptoms. Is that not so?

20 A. Yes.

21 Q. The report goes on to say: "Dr. Burnett evaluated the
22 patient on August the 18th and felt that she was not a risk to
23 herself or others and that she was safe for discharge from a
24 psychological standpoint. This having been said, Dr. Burnett
25 reports that the patient has numerous psychosocial stressors,

1 including having a difficult relationship with both of her
2 parents."

3 And this may become relevant as the case
4 progresses, Ms. Jones. Were you having, back in August of
5 2002, a difficult relationship with both of your parents?

6 A. They went through a divorce and I don't know what our
7 relationship standing was like then, but I'm extremely close to
8 both parents and I have been throughout my life. So, we -- I
9 mean, every child has rough patches with their parents.

10 Q. All right. Well, let's see what Dr. Burnett here reports
11 to the doctor. "Her mother herself may have some psychiatric
12 illness, even some features suggestive of Munchausen's
13 syndrome." Do you know what Munchausen syndrome is?

14 A. I do, and I totally disagree with that. My parents were at
15 this hospital visit and they had been through divorce within
16 the past couple of years and they were fighting with each other
17 in front of the doctor and the doctor documented some things.

18 And my dad outlashes at my mom and said that when
19 I stay at my mother's house, sometimes I come back sick. So,
20 he makes an allegation that my mother might be poisoning me;
21 but my mother was far from that. She was a stay-at-home
22 mother. She took me to the -- on drill team things and she was
23 the head of the Girl Scout leader and everything else. So, I
24 take issue with some things that are documented in this record.

25 THE COURT: Does the jury all understand

01:00 1 "Munchausen's"? Maybe some of you don't. That's a disease
2 that was diagnosed not too many decades ago. It refers to a
3 mother who seeks to sicken a child in order to generate
4 sympathy for her, the mother.

01:00 5 BY McKINNEY:

6 Q. Ms. Jones, I appreciate everything you just said; but you
7 understand that this is information that is being imparted to
8 your treating physician, Dr. Susan Jackson -- Susan Lackson, by
9 your psychologist, Dr. Robbie Burnett. You understand that, do
01:00 10 you not?

11 MR. KELLY: Your Honor, I would like to object. He's
12 testifying, and this is actually patently hearsay because we
13 don't even have a diagnosis from the mom. And he's testifying
14 about that hearsay.

01:01 15 MR. McKINNEY: I'm actually just -- well --

16 THE COURT: Okay. Do you know whether the information
17 to which Mr. McKinney refers was, in fact, given to your
18 treating physician, Dr. Lackson?

19 THE WITNESS: A lot of things in this record are
01:01 20 completely erroneous, and I believe that she maybe got me
21 confused with someone else or she was an older lady --

22 THE COURT: I'm not doubting that at all and maybe
23 this point cuts in your favor, but do you know whether
24 Dr. Lackson, in fact, conveyed the information to Dr. Burnett?

01:01 25 MR. McKINNEY: It's just the opposite, Judge, and

01:01 1 that's exactly what the report recites but --

2 THE COURT: Just a second. Just a second. I'm sorry.
3 It is, yeah, to Dr. Lackson by Dr. Burnett. I'm sorry.

4 BY McKINNEY:

01:01 5 Q. Let me see if I can shorten this. Ms. Jones. If you will,
6 turn back to the very last sentence of the first page --

7 A. Okay.

8 Q. -- very bottom sentence. You will see where the sentence
9 begins, quote, "This having been said, Dr. Burnett reports that
01:02 10 the patient has numerous psychosocial stressors, including,"
11 et cetera, et cetera, what we've already read?

12 A. I have a question. If Dr. Lackson wrote the report,
13 doesn't that make her the one that's writing all of this?
14 Or --

01:02 15 THE COURT: Well, that's a slightly different
16 question. We can talk about whether it was her own hand that
17 wrote her report.

18 THE WITNESS: It looks like it.

19 MR. McKINNEY: It's actually -- the report is signed
01:02 20 by Dr. Lackson, who, according to the report, was receiving
21 information from Dr. Burnett --

22 THE COURT: That's what he's asking about. Do you
23 know yourself whether that was -- in fact, that report was
24 conveyed to another doctor?

01:02 25 THE WITNESS: I don't know.

01:03

1

THE COURT: Okay.

2

BY McKINNEY:

3

Q. Were you present when Dr. Burnett and Dr. Lackson spoke?

4

A. No.

01:03

5

Q. All right. So, after the part about Munchausen's syndrome, Dr. Lackson notes further information as follows, quote: "Her father is reported to be an alcoholic, and they went through a bitter divorce several years ago. In addition, the patient is changing schools to remove herself from a difficult situation."

6

7

8

9

01:03

10

Now, you agree with me that in order for

11

Dr. Burnett to present that information to Dr. Lackson, that

12

information would have to come from somewhere, either you or

13

one of your family members?

14

A. My family was fighting in front of the doctors, and they

01:03

15

got a lot of their information from them fighting amongst each

16

other. And, I mean, my parents hate each other. My dad had an

17

affair; and, you know, he was trying to get back at my mom just

18

for whatever reason. And he was trying to accuse her of having

19

Munchausen's; and she probably tried to accuse him of being an

01:04

20

alcoholic, which he's not.

21

Q. All right. We drop down several lines. It states that you

22

had been working as a waitress and apparently had suffered

23

sexual harassment there resulting in the firing of your boss.

24

And, again, isn't that the kind of information that could only

01:04

25

come from you in order to wind up in this report?

01:04 1 A. I'm still friends with this boss. And he could come in
2 here and testify today that this never happened.

3 Q. Okay.

4 A. And he works -- he worked at Pasta Company, and now he
01:04 5 works at Taco Cabana on Loop 336. And that's why I am saying
6 that a lot of this information is erroneous. I don't know
7 where it came from. This did not come from me, and I don't
8 even know what to say about it because it's not true, so --

9 Q. Okay. So, just to finish with this one part and then we'll
01:05 10 move on. Although apparently it has been reported to your
11 physician that you were sexually harassed by your boss, in
12 fact, the truth is just the opposite, you were not sexually
13 harassed by your boss; your boss remains your friend to this
14 very day.

01:05 15 A. Yes.

16 Q. Fair statement?

17 A. Yes.

18 Q. Pardon me?

19 A. Yes.

01:05 20 Q. Okay. All right. Let's drop down to the next paragraph
21 because this is the part where they're actually talking about
22 you and observations of you in the hospital.

23 A. Okay.

24 Q. Okay?

01:06 25 MR. MCKINNEY: Let's go ahead and highlight this

01:06 1 paragraph.

2 BY MR. McKINNEY:

3 Q. It states here that: "The patient was seen by physical
4 therapy during her hospital stay and improved in terms of her
01:06 5 endurance and her ability to walk. Her exam findings were
6 inconsistent, however, at times with sudden weakness,
7 questionable ataxia and a scissoring gait, which was reported
8 to be voluntary per the physical therapist." And you and I
9 discussed this in your deposition, as you will recall?

01:06 10 A. Yes.

11 Q. And you understood then and you understood now that your
12 physical therapist -- or the physical therapist that you were
13 seeing at the hospital was essentially reporting that you were
14 pretending or faking some symptoms. You understand that?

01:07 15 A. Yeah. But once that seed has been planted, people start
16 thinking that that's what's going on. And I did -- I can't --
17 I went in to the doctor with 102 fever, and I don't agree with
18 a lot of this stuff. So --

19 Q. I understand. And we're going to kind of round this out in
01:07 20 just a minute and move on to another record and then we'll talk
21 about Mr. Iler and your time in Iraq. But right now these --
22 we're going over events in your life to see how you see them
23 and others see these same events.

24 And your testimony is that this physical
01:07 25 therapist inaccurately reported what he saw or she saw you do

01:07

1 because this physical therapist had been influenced in some
2 form or fashion by one or both of your parents. Is that what
3 you are telling us?

01:08

4 A. I'm not saying that. I mean, the physical therapist
5 probably really thought I was faking it. But I wasn't faking
6 it because I had a hundred degree fever. And --

01:08

7 Q. Let's go to the next entry then. "In addition, on the day
8 of her discharge, the patient's nurse observed her walking from
9 the bathroom unassisted until Jamie saw her nurse, at which
10 point she began to stagger and grab for the walls. This
11 further suggests that her neurologic symptoms are, in fact,
12 voluntary or psychosomatic in nature."

01:08

13 Now, let's focus on the part where the nurse
14 reports to the doctor that she sees you walking in a perfectly
15 normal fashion and then when you notice that you are being
16 observed by the nurse, you staggered and grabbed for the walls.
17 Did that happen?

01:09

18 A. She never confronted me about this or brought this to my
19 attention --

20 Q. Understood.

21 A. -- but -- no.

22 Q. I'm simply asking did that happen, did you, in fact --

23 A. I don't remember anything like that.

01:09

24 Q. All right. Do you think the nurse reported inaccurately
25 what she --

01:09 1 A. This may have been just a misunderstanding. I mean --

2 Q. All right.

3 A. Maybe I got weak. I mean, there could be a lot of
4 explanations for that.

01:09 5 Q. Okay.

6 A. But she never brought it up to my attention. And also, I
7 never have seen this document until I filed the lawsuit. So --

8 Q. Finally, the doctor notes -- and this is the next
9 paragraph -- "It should be mentioned that the patient's

01:09 10 neurologic exam is inconsistent. She has complained of the
11 above-mentioned symptoms as well as numbness in the middle of
12 her tongue, shaking at times, parenthesis, (she did have a
13 dystonic reaction to Phenergan which has subsequently
14 resolved), close parenthesis, and left-sided weakness. But on
01:10 15 exam, she has normal strength, which gives way voluntarily."

16 You understand that the physician here is noting
17 that you would voluntarily go weak or go limp when he was
18 testing your strength as a part of a neurological exam?

19 A. Yes.

01:10 20 Q. And again, the physician perceived that you were causing
21 your symptoms rather than actually having the symptoms. You
22 see that?

23 A. I think that my parents were acting so crazy in front of
24 them that they -- the seed was planted. But -- I mean, they
01:11 25 still said that it could still be viral. It said viral versus

01:11 1 psychosomatic.

2 Q. You understand that the doctor -- both a doctor, a nurse,
3 and a physical therapist, three separate adults, all made
4 separate observations about you?

01:11 5 A. Yes.

6 Q. That underscored the doctor's concern about your having a
7 psychosomatic issue rather than an actual issue?

8 A. But they didn't rule out an actual issue, Mr. McKinney.

9 Q. Are you quite sure about that?

01:11 10 A. It said, "Possible viral symptom versus psychosomatic
11 illness."

12 Q. In the interest of time, we'll let the jury, when they
13 deliberate, read all of the negative findings on your testing
14 in Exhibit B153.

01:12 15 THE COURT: Okay. Now, now, now --

16 MR. KELLY: Your Honor.

17 THE COURT: You're testifying. You're testifying.
18 The question is stricken.

19 MR. McKINNEY: Understood.

01:12 20 BY McKINNEY:

21 Q. Now, let me change subjects with you just briefly. I want
22 to nail something down that I believe you said in your direct
23 testimony last week; and that is, that in order to get away
24 from Mr. Iler, you got transferred to the operations department
01:12 25 there at KBR. Is that correct?

01:12 1 A. Yes.

2 Q. And that would have been some time in March or April of
3 2005. Is that correct?

4 A. I think it would have been after March.

01:12 5 Q. All right. Of 2005?

6 A. Yes.

7 MR. MCKINNEY: Excuse me. I need to get one more
8 exhibit.

9 THE COURT: All right.

01:13 10 BY MCKINNEY:

11 Q. I'm now going to ask you about a hospital admission in
12 September of 2004 in which you were reporting blacking out.

13 A. Oh, okay.

14 Q. All right? And that would be Exhibit B164, if you care to
01:13 15 look at it.

16 A. Okay.

17 Q. Are you there?

18 A. Yes, sir, I am.

19 Q. Now, generally do you recall reporting to your physicians
01:14 20 at the time, September of 2004 -- and you might want to look at
21 the third page of Exhibit B164 -- that for the last two months,
22 your headaches were becoming more frequent with increased
23 severity two to three times a week and on three occasions,
24 headaches were followed by blurry vision, after which time you
01:14 25 blacked out and passed out? Do you recall reporting that to

01:14

1 your doctors back in September of 2004?

2 A. Yes.

3 Q. And, in fact, were you having blackouts back in 2004?

4 A. I went to the doctor to rule out a seizure disorder.

01:15

5 Q. Yes, ma'am. The question is: Were you, in fact, having
6 blackout periods during -- in September of 2004?

7 A. Let's see. In September of 2004, I was working at
8 operations and I would get really tired and oftentimes I would
9 fall asleep and that's not like me. So, I went to the doctor
10 to see if I was just passing out or blacking out.

01:15

11 Q. Well, if you'll recall, I began this line of questioning by
12 confirming with you that you transferred to operations actually
13 after March of 2005.

14 A. Okay.

01:16

15 Q. And this is September of 2004, well before you transferred
16 to operations.

17 A. Trying to remember. I was also working a lot of nights.
18 Eric Iler would keep me late at night oftentimes, and that
19 would make me very tired. So, if it wasn't the night shift, it
20 was all those hours after work that he would make me stay and I
21 remember being really tired and that's why I wanted to go see
22 if there was something secondary going on.

01:16

23 Q. Well, again, if we look at the third page of B164 --

24 A. I only have two pages.

01:17

25 Q. I have it as a four-page document.

01:17

1 A. Oh, wait. Maybe -- okay. Never mind. I'm sorry. My
2 mistake.

3 Q. Can you get to the -- how many pages do you have there?

4 A. Four now.

01:17

5 Q. All right. If you'll look at the third page --

6 A. Okay.

7 Q. -- we talked about this just a moment ago.

8 A. Okay.

9 Q. Where there's the history of your present illness, do you

01:17

10 see that in the middle of the page?

11 A. Past medical history?

12 Q. History of present illness right --

13 A. Oh, yes. Okay. I see it.

14 Q. Now, if we were to read all of that in detail for our jury,

01:17

15 we wouldn't find any reference to you working late at the
16 office, would we? Go ahead and read it to yourself and feel
17 free to tell me if there's a reference there to you working
18 late at the office.

19 A. There wasn't one. I don't even know if I talked about

01:17

20 that.

21 Q. And instead, we have very specific descriptions of you
22 having headaches followed by blurry vision, then blacking out
23 and passing out and not being able to remember the event.

24 That's what the doctor wrote down that you reported?

01:18

25 A. Right.

01:18 1 Q. Now, is it, in fact, true that in September of 2004 that
2 you were having periods where you would black out and have no
3 memory?

4 I'm not talking about falling asleep. I'm
01:18 5 talking about actually blacking out, as it says here in the
6 record, and having no memory.

7 A. I didn't know what was going on. I mean, I was even
8 driving and hit the side of the wall and don't remember hitting
9 the side of the wall because I either fell asleep or blacked
01:19 10 out. So, that's why I went to the doctor and tried to figure
11 it out.

12 Q. All right. So, let's move on then --

13 A. Okay.

14 Q. -- to Eric Iler. And in that connection, let me see if I
01:19 15 understand that situation. Sometime -- do I understand
16 correctly that sometime in August or September of 2004, Eric
17 Iler learned that you and your boyfriend had broken up?

18 A. We broke up in July.

19 Q. And sometime after that, did Mr. Iler then begin to come on
01:20 20 to you?

21 A. Right.

22 Q. And was that in August or September?

23 A. I don't remember the month. It was after July.

24 Q. Okay. Now, do you recall telling us in your deposition
01:20 25 that it could have been August or September or October, you

01:20

1 really didn't remember?

2 A. Right, I did tell you that.

3 Q. Do I understand that the nature of your relationship with
4 Mr. Iler was that he required you to pretend to be his
01:20 5 girlfriend?

6 A. No, that's not exactly right. He required me to have sex
7 with him and everything else and then that made me have to
8 pretend. It was a quid pro quo.

9 Q. Okay. And we're going to get to all of the details.

01:21

10 A. I had to play the part.

11 Q. That's what I am asking. You were instructed or compelled
12 or coerced, according to your testimony, by Mr. Iler to play
13 the part of his girlfriend, including all of the sex that we
14 won't talk about too much hopefully in too much detail. But
01:21 15 that's what the situation was, correct; that is, compelled to
16 play the part of his girlfriend?

17 A. Yeah.

18 Q. And you'll need to speak up --

19 A. Yes.

01:21

20 Q. -- Ms. Jones.

21 And so, every day for some number of months, you
22 had to play the role of Eric Iler -- the unwilling role of Eric
23 Iler's girlfriend?

24 A. Yes.

01:22

25 Q. And you don't know whether that started in August or

01:22 1 whether that started in September or whether that started in
2 October?

3 A. The thing was that it was pretty quickly after he found out
4 that I did not have a boyfriend anymore, things would escalate.
01:22 5 He would take me to a dinner or -- I mean, he molded the
6 situation.

7 Q. Yes, ma'am. And I understand that. Excuse me. Let me get
8 a drink.

9 I'm actually trying to nail down our date
01:22 10 parameters at this point so that the jury can understand how
11 long you were required to pretend to be Eric Iler's girlfriend.

12 A. Well, clearly by October some sex was involved.

13 Q. But it started off without sex, correct?

14 A. Right.

01:22 15 Q. He would simply take you to lunch or force you to go to
16 lunch or force you to go to dinner and that started sometime
17 before October, did it not?

18 A. Well, yeah. And at first it would be like, Oh, well, we
19 worked all day. We're both hungry. Let's go have a bite to
01:23 20 eat, things like that. And then it became very unwanted when
21 it got past a certain point.

22 Q. And again, so that we have our dates down, you told us in
23 your deposition that Mr. Iler and you first had sexual
24 intercourse in December around Christmas time. Is that
01:23 25 correct?

01:23 1 A. I think that we had some kind of sexual activity definitely
2 in October.

3 Q. Yes, ma'am. And you told us that, too. And the specific
4 question I'm asking pertains to sexual intercourse. And did
01:24 5 you not tell us in your deposition that you had -- the first
6 time you had sexual intercourse with Eric Iler was in December,
7 sometime around Christmas?

8 A. I'm really bad with dates. So, I'm going to disclose that
9 I'm really horrible with dates. It's going to be really hard
01:24 10 to nail down certain dates with me just because this was years
11 ago.

12 Q. Understood. Let me get my notes I seem to have misplaced.
13 That's why I brought a second set.

14 A. Okay.

01:24 15 MR. McKINNEY: If we could look at, please, Ms. Jones'
16 deposition at -- just a second.

17 BY MR. McKINNEY:

18 Q. I hate it when this happens.

19 A. No problem. Take your time.

01:25 20 Q. Well, I'll try to find it in my notes when we're not taking
21 up the jury's time.

22 A. Okay.

23 Q. If there is deposition testimony to the effect that the
24 relationship with Mr. Iler began sexually sometime in September
01:25 25 or October but did not progress to sexual intercourse until

01:25 1 December in the Christmastime frame, would our jury be entitled
2 to rely on the accuracy of that testimony?

3 A. I'm trying to remember the dates. The dates is really
4 hard. September and October -- that was -- let's see.

01:26 5 Q. Actually, I think I've found it.

6 A. Okay.

7 Q. Let's go to --

8 A. Also, throughout my deposition I wasn't real sure on the
9 date. But I know probably around September or October there
01:26 10 was things that would make us derobe. But probably November,
11 December-ish is when actual intercourse started.

12 Q. All right. And I think if we look at Page 296 of your
13 deposition --

14 A. Okay.

01:27 15 Q. -- it's the second volume of your deposition. Sorry. 286.

16 MR. McKINNEY: Your Honor, I can approach or I can put
17 it up on the screen.

18 THE COURT: Put it on the screen, please.

19 MR. McKINNEY: Can we put up Page 286, Line 20?

01:27 20 THE COURT: This is an exhibit that's already been
21 admitted.

22 MR. McKINNEY: It's her testimony from her deposition.

23 I'm far more technologically challenged than
24 anyone in the room.

01:28 25 THE COURT: You're in good company.

01:28 1 BY McKINNEY:

2 Q. You can see where I've highlighted the portion: "I believe
3 that you've testified that you first had intercourse with Eric
4 Iler in December of 2004. Is that correct?"

01:28 5 MR. KELLY: Your Honor, that's not her testimony.
6 That's the question.

7 MR. McKINNEY: Yes. Sorry, that's the question.

8 MR. KELLY: Mischaracterizes the --

9 MR. McKINNEY: No, that's correct, that is the
01:28 10 question. My mistake.

11 BY MR. McKINNEY:

12 Q. Your answer at Page 287, Line 1: "I think actual vaginal
13 intercourse. I think that's about the -- about the time."

14 And then as we can see on down, so the question
01:29 15 was asked: "So, you really don't know when you first engaged
16 in some sort of sexual activity with Eric Iler?"

17 Your answer was: "I just thought it to be around
18 Christmas time frame."

19 And then the question is: "That you first
01:29 20 engaged in sexual activity with Eric Iler?"

21 And your answer: "No, sexual intercourse."

22 Now, is that reliable testimony that we can all
23 depend on as we evaluate this case?

24 A. And also, the -- if you further read -- if you read the
01:29 25 whole thing, then, yes.

01:29

1 Q. Yes, exactly. And sometimes --

2 A. Which means in September or October --

3 Q. There were other types?

4 A. -- other types of sexual activity, yes.

01:30

5 Q. Yes. Understood.

6 THE COURT: Just to be complete, you also noted at the
7 time that you were very bad with times and dates.

8 THE WITNESS: I'm very bad with times and dates.

9 THE COURT: You said that as part of your testimony.

01:30

10 THE WITNESS: I mean, it's been an ongoing problem
11 with me. I just cannot remember times and dates very well.

12 BY MCKINNEY:

13 Q. Now, again, so that we have our time frames down, the deer
14 hunt that you told us about where, according to you, some
15 pretty horrible things happened, that was in right around
16 January the 1st of 2005?

17 A. I think it was in February.

18 Q. All right. Because of the transmittal letter or the
19 transmittal e-mails?

01:30

20 A. I'm pretty sure it was February.

21 Q. All right. Did you testify in your direct examination that
22 the deer hunt was canceled or called off after a day because
23 Eric's father became very sick and actually passed away the
24 following week?

01:31

25 A. That was not in my testimony. That must have been Eric

01:31

1 Iler's.

2 Q. All right. Did you testify on your direct testimony that
3 the deer hunting trip was -- only lasted one night and one day?

4 A. I don't remember what I said, but I think it lasted a night
01:31 5 and a full day; and then when I went home is when I sent those
6 pictures.

7 Q. All right. How many deer hunts did you go on with
8 Mr. Iler?

9 A. I think just the one.

01:31

10 Q. Okay. Are you sure about that?

11 A. Pretty sure.

12 Q. Okay. Let's now go to Exhibit B2.

13 A. Okay.

14 Q. Actually B3, please look at that one first.

01:32

15 A. Where are we at? What tab?

16 Q. That will be Bortz Exhibit 3.

17 A. Oh, okay.

18 Q. Are you there?

19 A. I am.

01:33

20 Q. Do you recognize Bortz Exhibit 3 as a document that
21 purports to be an e-mail reminder to yourself?

22 A. Yes.

23 MR. McKINNEY: Your Honor, I move for the admission of
24 Bortz 3.

01:33

25 MR. KELLY: No objection.

01:33 1 THE COURT: Admitted without objection.

2 MR. McKINNEY: And while we're on the subject, I also
3 move for the admission of Bortz 2. It's the e-mail right
4 before that one.

01:33 5 MR. KELLY: Also no objection, your Honor.

6 THE COURT: Admitted without objection.

7 BY McKINNEY:

8 Q. We talked about these e-mails in your deposition?

9 A. Yes.

01:33 10 Q. And you told us then that you had no recollection of
11 preparing either one of these e-mail reminders to yourself?

12 A. Right. But that doesn't mean that I didn't. And I had to
13 play the part. It's not like I'm going to remember Eric Iler's
14 birthday. I could care less about it being in my memory
01:34 15 because he wasn't an actual boyfriend. So, I had to set
16 reminders.

17 And if I didn't play the part, I would be fired.
18 My job was held above my head. I had more than me to think
19 about. I had to think about my mother and everything else.

01:34 20 Q. What was your mother's circumstances? You mentioned your
21 mother's ill health several times now. What was going on with
22 your mother back in August, September, October of 2004 that was
23 of concern to you?

24 A. I'm not good with dates; but she had a lot of difficulties
01:34 25 in and around this time frame and that would be she was obese,

01:34 1 she had horrible diabetes, she had to get lots of treatment for
2 that. She had a gastric bypass, which, in turn, led to a
3 life-threatening abscess and an intestinal leak. And she's had
4 to have a couple of surgeries since her gastric bypass to try
01:35 5 to resolve those issues.

6 So, she was super sick. She had -- she was in
7 and out of the hospital. I would -- oftentimes I would drive
8 from work straight to the hospital and stay with her at night
9 at the hospital and then wake up from the hospital and drive
01:35 10 back to work.

11 Q. Well, if I may, Ms. Jones, is it your testimony here today
12 that in the fall of 2004 -- and I realize you're bad with
13 dates -- but in the fall of 2004, you were under significant
14 financial duress as a result of your mother's ill health?

01:35 15 A. I don't remember when she got the gastric bypass, but
16 that's when more financial duress was. However, we were under
17 quite a bit of financial duress before because she was -- had
18 really bad complications with diabetes and we were living
19 together in a really small home and she had to take an FMLA.

01:36 20 THE COURT: Ladies and gentlemen, FMLA, as you may
21 have experienced, is a Family Medical Leave Act. It allows
22 for, under certain conditions, employees to take leave from
23 their employer without jeopardizing their employment.

24 BY MCKINNEY:

01:36 25 Q. Your mother had her gastric bypass surgery in February of

01:36 1 2005, correct?

2 A. If that's from her deposition that -- she would know. But
3 before her gastric bypass, she had a whole lot of medical
4 issues, which led her to do something that drastic. And I had
01:36 5 to help her with all those medical issues.

6 Q. All right. I don't want to belabor this point, Ms. Jones;
7 but for a year or so up until July, you lived away from home,
8 correct?

9 A. Up until around July.

01:37 10 Q. All right.

11 A. And when I broke up with my boyfriend and moved in with my
12 mom, that's when I really started to figure it out.

13 Q. And about that time, July, August, September, somewhere in
14 there, at a time when you're saying that you were under
01:37 15 significant financial duress, you bought a new Jaguar --

16 A. The Jaguar was not very expensive.

17 Q. -- true?

18 A. And I needed a car for -- a decent working car, and it was
19 the bottom-of-the-line stick shift Jaguar.

01:37 20 Q. All right. And another expense, discretionary expense,
21 that you incurred in November of 2004 at a time when you have
22 told us that you were under extreme financial duress was your
23 breast augmentation surgery. That was not inexpensive, was it?

24 A. I took out a loan, and I had to make payments on that. And
01:38 25 that was something that Eric Iler kept wanting me to do.

01:38 1 Q. Eric Iler wanted you to get your implants?

2 A. Yes.

3 Q. All right. More about that perhaps later.

4 MR. McKINNEY: Let's put Bortz Exhibit 3 up on the
01:38 5 screen, please.

6 BY McKINNEY:

7 Q. So, here we see on Tuesday, August the 10th, you have sent
8 an e-mail reminder to yourself in capital letters with three
9 exclamation marks reminding you that Eric's birthday is on the
01:38 10 20th. That's what we see here on this piece of paper. Is that
11 not true?

12 A. Right.

13 Q. And did Mr. Iler require you to write this e-mail reminder
14 to yourself and print it out and show it to him as part of
01:39 15 pretending to be his girlfriend?

16 A. Mr. McKinney, you know that's not the case. You know that
17 he was coercing me into this relationship and I had to do
18 things to keep my job. I had to play the part and I -- if he
19 was my actual boyfriend, I would remember his birthday. I --
01:39 20 it wasn't something that I cared to remember.

21 And so, I had to send reminders to myself. And
22 if I failed to do something, it was held over my head. He was
23 treating me in the worst possible way. I don't know -- I don't
24 know your background, Mr. McKinney; but the things that I had
01:39 25 to do to keep my job, I hate myself for. And I hate what he

01:39 1 did to me. And if I could take all this back, be somewhere
2 else and this not be my reality, I would.

3 Q. Ms. Jones, you're right, you don't know me. And if you
4 did, you probably wouldn't say what you just said. That's
01:40 5 beside the point.

6 What we're talking about, Ms. Jones -- and I'm
7 sorry to put you through this, but it's necessitated by the
8 lawsuit that you filed.

9 A. I understand.

01:40 10 Q. (Continuing) -- is we're going to talk about --

11 A. And I respect your position.

12 Q. We're going to talk about e-mails that you wrote and that
13 your mother wrote -- and we'll be talking about those very
14 shortly -- at the time that, you would agree with me, are
01:40 15 subject to multiple interpretations, one of which is your
16 relationship with Eric Iler was purely consensual?

17 A. It absolutely was not.

18 Q. But it is subject -- these documents -- you will agree with
19 me these documents are consistent with --

01:41 20 A. This right here is not --

21 Q. -- a consensual relationship?

22 A. -- is not consistent with it. If he was my actual
23 boyfriend, I would remember his birthday.

24 THE COURT: Let's move on. Let's move on.

01:41 25 BY McKINNEY:

01:41 1 Q. Exhibit B2 is an e-mail reminder to yourself all in caps,
2 exclamation mark, to buy Eric a present?

3 A. Yes, it is.

4 Q. It's a fair interpretation of Bortz Exhibit 2 that at the
01:41 5 time you were doing exactly what this e-mail appears to say,
6 reminding yourself to get a present for Eric Iler, correct?

7 A. A reminder.

8 Q. Now, let's go to some e-mails between you and your mother,
9 Bortz Exhibit 7. And we'll start at the bottom -- or at the
01:42 10 beginning of the e-mail string, which is the last page of Bortz
11 Exhibit 7.

12 MR. MCKINNEY: And I move for the admission of Bortz
13 Exhibit 7.

14 MS. VORPAHL: No objection.

01:42 15 MR. KELLY: Let me see what it is, first.

16 No objection, your Honor.

17 *(Sotto voce discussion between plaintiffs' and defense*
18 *counsel)*

19 BY MCKINNEY:

01:42 20 Q. Let's go to the last page, please, of Bortz 7, the
21 beginning of the e-mail string. At the very bottom, you can
22 see that there is an e-mail original message from
23 CindyJones@coair.com. Do you see that?

24 A. Yes.

01:43 25 Q. Cindy Jones would be your mother, correct?

01:43 1 A. Right.

2 Q. Who's name is now Breanna Morgan?

3 A. Yes.

4 Q. And it appears that -- and Ms. -- what we see here is that
01:43 5 your mother is forwarding some pictures to you from a tsunami
6 back in 2005 to your address at LOGCAP III, correct?

7 A. Right.

8 Q. And then above, right up here, we see a response back to
9 your mother and the response says: "Hey, I was assigned to
01:44 10 check Eric's voice mail while he is out; and there was a
11 message from his ex on there. It was like, 'Hey, Eric, I've
12 been trying to call you. I don't know why you're not answering
13 me. I didn't expect you to be at work anyways'. And that's
14 all she said. I know it was his ex because the answering
01:44 15 machine states the caller's name for you. And it said Jennifer
16 Royal."

17 And if we turn the page and look at the bottom,
18 we'll see that that e-mail was sent by you to your mother on
19 Wednesday, January the 5th, 2005, at 1:16 p.m.

01:45 20 Now, do you actually have any memory whatsoever
21 of this e-mail chain?

22 A. No.

23 Q. All right. And that's what you told us in your deposition,
24 correct?

01:45 25 A. Right. However, this is at a time when my mother didn't

01:45 1 know -- I didn't want to burden her with what was going on at
2 work.

3 Q. So, your mother did not know about your relationship with
4 Eric Iler at this point?

01:45 5 A. She knew that there was one, but she didn't know that it
6 was a quid pro quo and I don't even -- she knew about it when I
7 was hospitalized for HPV.

8 Q. You and your mother were close?

9 A. Yes.

01:45 10 Q. And you lived together?

11 A. Yes.

12 Q. Shared a one-bedroom apartment?

13 A. Right.

14 Q. Every day you were living with the pressure and the burden
01:46 15 of pretending to be Eric Iler's girlfriend, did you pretend to
16 be his girlfriend around your mother as well?

17 A. I don't think that she met him until I was hospitalized
18 with the herpes outbreak.

19 Q. Yes, ma'am. That was actually not the question.

01:46 20 At this point -- we're talking January the 5th of
21 2005 -- you have made a number of overnight trips to Eric's
22 home in Liberty, Texas, have you not?

23 A. Yes.

24 Q. Your mother knew where you were going because you would
01:46 25 tell her, correct?

01:46 1 A. She didn't know his age. She didn't know a lot. I
2 disclosed it from her because she had a lot of health issues;
3 and if she knew what her daughter was doing to help her pay for
4 medical bills, I don't know what she would have done.

01:47 5 Q. All right. Now, that actually was not the question,
6 either. At this point in time your mother knows that you have
7 made a number of overnight trips to Liberty, Texas, to be with
8 Eric Iler, correct?

9 A. I don't know if she knew where I was going. I don't know
01:47 10 if I disclosed that to her.

11 Q. All right. Well, did she knew that you were going out with
12 Eric Iler?

13 A. She knew that, yeah.

14 Q. All right. And did she, like mother's often do, ask you
01:47 15 about your boyfriend, what does he do?

16 A. I would never talk about it.

17 Q. You would never talk about it?

18 A. No.

19 Q. Okay. So, your mother might ask you, but you wouldn't
01:47 20 respond?

21 A. Right.

22 Q. All right. So, what we see after the portion we just read,
23 your -- your mother's response is: "That tells you
24 something" --

01:48 25 MR. McKINNEY: Highlight this part right here.

01:48 1 BY MCKINNEY:

2 Q. "That tells you something" -- this is your mother writing
3 back to you.

4 "He does not want to talk with her, Jamie. Take
01:48 5 that as a good sign. He has included you to share in his
6 grief. He has chosen you."

7 And your response right up here: "Are you sure,
8 Mom?" That's what you wrote apparently to your mom at this
9 point in time, January of 2005, correct?

01:49 10 A. I don't remember these e-mails; but Jennifer Royal used to
11 be a subordinate of Eric Iler's and if he would have gone with
12 her or chose her, then I wouldn't have a place in his office
13 for employment anymore.

14 Q. All right.

01:49 15 A. And that was my apprehension.

16 Q. Well, so, you remember -- you don't remember these e-mails,
17 but you do remember being worried when you got the voice mail
18 message --

19 A. No. I was worried about Jennifer Royal.

01:49 20 Q. That's what I was getting ready to ask. You were concerned
21 when you heard the voice mail message from Ms. Royal that she
22 might become involved again with Mr. Iler and he would no
23 longer -- I'm supposing here and tell me if I'm wrong -- your
24 concern was that Ms. Royal would replace you as Mr. Iler's
01:49 25 girlfriend and you would lose your job. Is that what you are

01:50 1 telling us?

2 A. No.

3 Q. All right. Tell me where I got it wrong.

4 A. Okay. I don't even remember the voice mail. I don't

01:50 5 remember the e-mails. However, I do remember there being a

6 time when I was worried that if Jennifer Royal came into the

7 picture I would have no job, I would have no way to support me

8 and my mother. And there was times where they would go out to

9 eat and everything else. And she was also a young lady, too.

01:50 10 And I feel that he was -- he predated [sic] on young women, on

11 young employees.

12 Q. Well, Ms. Royal will be here to testify eventually; and

13 we'll hear her side of the story. But let's focus on these

14 e-mails which you say you don't remember and you don't remember

01:50 15 the voice mail that led to these e-mails, correct?

16 A. Right.

17 Q. So, you say to your mother: "Are you sure, Mom?"

18 MR. MCKINNEY: And if we turn the page, if we can

19 highlight that.

01:51 20 BY MCKINNEY:

21 Q. Your mother writes back: "Yes, I am sure. He has included

22 you and chosen you to share in his grief. You are where he

23 must feel peace and safe. Maybe she thinks she has a shot now

24 that she thinks he is at a sad time in his life, not knowing

01:51 25 that he has this part of his life fulfilled."

01:51 1 MR. MCKINNEY: Turn the page.

2 BY MR. MCKINNEY:

3 Q. "No worries. You are there. She isn't. Smile to
4 yourself. You are the one."

01:52 5 Would your mother say this to you if she thought
6 that you were in the kind of relationship that you have
7 described having with Eric Iler?

8 A. She was oblivious to it at this time.

9 Q. All right. Would she say this to you if she did not have
01:52 10 the belief and the impression that you were having a consensual
11 relationship with Eric Iler and a relationship that you wanted
12 to preserve? Would a mother make a statement like this to a
13 daughter if she didn't believe that that daughter had a
14 boyfriend that she wanted to keep?

01:53 15 A. I kept her from all this. I concealed it.

16 Q. So --

17 A. So, no, she wouldn't have said it.

18 Q. So, that leads me to ask the question that I asked a moment
19 ago. Were you pretending so well that you pretended around
01:53 20 your mother as well as Eric Iler and everyone else?

21 A. I had a lot of avoidance when my mother would talk to me
22 about Eric Iler. I avoided the issue a lot. She knew his
23 name. She knew I would spend time with him.

24 Q. All right.

01:53 25 A. I wanted to protect her.

01:53 1 Q. Now, we're going to -- we're still going to be talking
2 about Mr. Iler, but we're going to talk about the difficult
3 subject of sexually transmitted diseases. And you were -- get
4 my -- having a note malfunction, again.

01:54 5 You're aware, unfortunately, in this day and age,
6 and for the last 20 or 25 years ago, sexually transmitted
7 diseases have been a nationwide and a worldwide problem?

8 A. Yes.

9 Q. And people can get STDs through normal, healthy relations
01:55 10 with someone and -- or through involuntary relations, correct?

11 A. Correct.

12 Q. You now have two STDs, correct, HPV and HSV?

13 A. Different strains of it, but, yes.

14 Q. And you understand the HPV to be Human Papilloma Virus

01:55 15 or -- which is more commonly known as genital warts, correct?

16 A. Yes.

17 Q. And you understand that HSV is the Herpes Simplex Virus?

18 You've come to understand that?

19 A. Of course.

01:55 20 Q. All right. Now, when you met your husband and as your
21 relationship with your husband progressed, you, of course, were
22 required to disclose that you had these two diseases, right?

23 A. I did disclose it.

24 Q. And once disclosed, that would get -- your husband and you
01:56 25 would have the option of abstaining when your diseases were

01:56 1 active or taking appropriate protective measures. That's how
2 one deals with an STD, correct?

3 A. That's how one deals with it. We don't deal with it
4 necessarily in that way, but generally speaking, yes.

01:57 5 Q. Let's look now, please -- if you would, look now, please,
6 Ms. Jones, at B165.

7 MR. McKINNEY: And I move to admit B165.

8 MR. KELLY: Has this one been redacted? Is it subject
9 to redaction?

01:57 10 MR. McKINNEY: I don't believe it is.

11 *(Discussion off the record)*

12 MS. VORPAHL: We have no objection.

13 MR. KELLY: No, you're right. I don't object to this
14 one either.

01:57 15 THE COURT: No objection?

16 MR. KELLY: No, your Honor.

17 THE COURT: Admitted without objection.

18 MR. McKINNEY: If we could put B165 up.

19 BY McKINNEY:

01:58 20 Q. Ms. Jones, you've had a chance to see this document before,
21 have you not?

22 A. Yes.

23 Q. And this is a record from Dr. Scott, your regular OB-GYN,
24 back in 2004?

01:58 25 A. Yes.

01:58

1 Q. And the record is dated October 25th, 2004?

2 A. Right.

3 MR. McKINNEY: And if we could highlight starting from
4 the "18-year-old" down to that part right there.

01:58

5 THE WITNESS: I think they got my age wrong. There
6 was another error in the medical record.

7 BY McKINNEY:

8 Q. Actually, at the time you were 19?

9 A. Yes.

01:58

10 Q. So, it says: "18-year-old WF," white female, "presents
11 complaining of N/V" -- do you know what "N/V" stands for?

12 A. No. I'm sorry.

13 Q. All right. (continuing) -- "for a day, severe headache.
14 Patient reports chronic headaches and recently seen in ER

01:59

15 secondary to passing out, diagnosed with seizure disorder." Do
16 you see that?

17 A. I see it.

18 Q. Were you actually diagnosed with a seizure disorder?

19 A. I don't know. I was given Topamax for a possible seizure
20 disorder.

01:59

21 Q. All right. Now, the next line states: "Patient also wants
22 STD screen secondary to newest boyfriend" -- you understand the
23 2 with the little zero behind it means secondary?

24 A. Right.

01:59

25 Q. To begin again: "Patient also wants STD screen secondary

02:00 1 to newest boyfriend, called her and said he had an STD."

2 Did Eric Iler call you on October 25th, 2004, and
3 tell you that he had an STD? Or prior to October 25th --

4 A. This is after we had some sexual encounters. And we talked
02:00 5 on the phone about a mark that he had down there. And he said
6 that it was from a circumcision. But I didn't believe that it
7 was.

8 Q. All right.

9 A. So we had the STD conversation, at which he did not
02:00 10 disclose.

11 Q. Well, let's --

12 A. But because I saw that mark down there, it freaked me out
13 and I wanted an STD screen. And the doctor wanted a reason, so
14 I shortchanged it and said something as quick as possible.

02:01 15 Q. So, you actually remember having this conversation with the
16 doctor?

17 A. Yeah.

18 Q. All right. Back in October of 2004, you remember that
19 conversation here today in 2011?

02:01 20 A. I remember the reason for the visit and some of the
21 conversation.

22 Q. All right.

23 A. And she'll be here to testify, too.

24 Q. Sure she will.

02:01 25 Now, what the doctor wrote down is that you

02:01 1 characterized Mr. Iler as your newest boyfriend. We see that
2 there, do we not?

3 A. Yes.

4 Q. And what the doctor wrote down is that your newest
02:01 5 boyfriend had called you and disclosed to you that he had an
6 STD. That's what the doctor wrote down?

7 A. Yes.

8 Q. If we just looked at this sentence, what the doctor wrote
9 down -- presumably based on what you told the doctor, correct?

02:02 10 A. I said that I had a phone conversation about an STD with
11 the newest boyfriend. And I used the word "boyfriend" because
12 I didn't know how to describe him, and my mother was sitting
13 right there.

14 Q. You say your mother was sitting there?

02:02 15 A. Yes.

16 Q. Can you see where -- is there any indication in the
17 doctor's record that your mother was present?

18 A. It wouldn't matter if there is or isn't. She was there.

19 Q. All right. Why would you bring your mother to a doctor
02:02 20 visit if you're going to be discussing an STD?

21 A. Because we went to the same doctor, and she took me to my
22 doctors' visits often.

23 Q. And your mother would actually come into the room while you
24 were being examined by your OB-GYN?

02:03 25 A. Yes.

02:03 1 Q. And this is the mother who you kept the various details
2 about Mr. Iler, you kept that secret from your mom there at the
3 house?

4 A. And I wanted the STD screen. And if like HIV or hepatitis
02:03 5 or something was positive, I would want her there.

6 Because when I was here, I didn't get tested for
7 that. I got tested for -- because he didn't disclose what he
8 had. If he had disclosed what he had, I would have gotten
9 tested for HPV or HSV. In here I got tested for like AIDS,
02:03 10 hepatitis, different things like that.

11 Q. Okay. Actually, I don't think that was the question. I'll
12 try to start over here.

13 Just trying to get the picture of the
14 relationship you had with your mother at the same time you were
02:04 15 having the relationship with Mr. Iler. And I want to make sure
16 I understand it correctly.

17 While at home, you would talk very little about
18 Mr. Iler, you would not respond to your mother's questions, and
19 you did this for many, many, many months, correct?

02:04 20 A. Yes.

21 Q. Yet, when you had a conversation with Mr. Iler -- and he
22 will be here to testify also, so we'll hear his side of it.
23 But you had a conversation with Eric Iler. And after that
24 conversation, you decided you wanted to see your doctor about
02:04 25 an STD screen, correct?

02:05 1 A. Yes.

2 Q. And although your practice had been to keep Mr. Iler out of
3 the conversation with your mother, for some reason you chose to
4 bring your mother to this particular OB-GYN meeting where it
02:05 5 was necessary to explain these matters to your doctor. Is that
6 pretty much what you're telling us?

7 A. Yes. Because the mark on him looked really bad. And I was
8 afraid that he was going to catch hepatitis, AIDS, something
9 like that. He didn't disclose what he had, so I didn't get
02:05 10 tested for herpes or HPV. If he would have disclosed that, I
11 would have just got tested for that.

12 Q. Okay. Well, to follow up on the answer you just gave, on
13 the one hand you're keeping all of these issues from your
14 mother; on the other hand, you're concerned because of this
02:06 15 horrible mark that you saw on Mr. Iler that he could have a
16 very severe and profound STD. And without telling your mother
17 anything about Mr. Iler, the bad news, you brought her to a
18 doctor meeting and disclosed in the presence of your mother
19 that your boyfriend told you he had an STD and you wanted to be
02:06 20 screened, correct?

21 A. Yes.

22 Q. Now, did your mom have any questions for you about Mr. Iler
23 after she sat in that doctor meeting and learned that you were
24 dating a man who had a sexually transmitted disease?

02:07 25 A. Yeah, I'm sure she did.

02:07 1 Q. Well, if you can remember in detail the conversation that
2 you had with your doctor, with your mother present, back in
3 October of 2004, perhaps you can remember in detail the
4 conversation you had with your mother, who I would imagine was
02:07 5 somewhat shocked, was she not, to hear that her 19-year-old
6 daughter was dating a man that had an STD? Tell me about that
7 conversation with your mother.

8 A. I just know that she went there for support, and she wanted
9 more answers. She hadn't met him yet. She wanted to know how
02:07 10 old he was, and things like that. And I still didn't disclose
11 that. I didn't want to burden her.

12 Q. Well, I'm working here off of my knowledge of how my wife
13 would have reacted at my daughters --

14 THE COURT: No, no, no, no, no.

02:08 15 MR. McKINNEY: Excuse me. I'll try to phrase it
16 differently.

17 BY MR. McKINNEY:

18 Q. You and your mother living there in a one-bedroom
19 apartment, she finds out that you're dating a man with an STD
02:08 20 in late October of 2004, and she doesn't have a ton of pretty
21 pointed questions for you about what's going on in your life
22 and, "Who is this man," et cetera, et cetera?

23 A. Well, the STD wasn't confirmed here at this appointment
24 because we didn't test for the two diseases that he had. He
02:08 25 didn't disclose those. I simply went in because of the mark

02:08 1 that he had down there. And we talked about the mark and kind
2 of what it looked like. I was really concerned about it. And
3 had --

4 Q. But, Ms. Jones, that wasn't the question.

02:09 5 A. But you're saying that he definitely had the STD --

6 THE COURT: No. I believe he is asking about your
7 mother's reaction.

8 THE WITNESS: Oh. Just --

9 BY MR. MCKINNEY:

02:09 10 Q. Here's the question. You and your mom are there in this
11 small apartment, you're her only daughter, you're 19 years old,
12 she knows you're going out with a man named Eric Iler whom you
13 work with. All true, correct?

14 A. Yes.

02:09 15 Q. And your mother has sat in on this doctor visit where you
16 disclose for the first time to your mother that your boyfriend
17 has called and informed you that he has an STD and you want an
18 STD screen. Again, so far this is the fact pattern we're
19 looking at, correct?

02:10 20 A. And I don't know if those are my choice words, but that's
21 what the doctor wrote down.

22 Q. Well, the doctor writes -- as you know, the doctors try to
23 write down what their patients tell them.

24 A. The doctors' notes have all kinds of errors, Mr. McKinney.
02:10 25 Even here it says I'm 18 years old.

0 2 : 1 0 1 Q. Doctors try to write down what you tell them; do they not?

2 A. They try.

3 Now, how I remember the conversation is that -- I
4 don't know who called who, but we talked about the -- am I
0 2 : 1 0 5 taking too long?

6 Q. No, no. I was just seeing if I was taking too long,
7 actually. Please continue.

8 A. We talked about a mark that I saw down there on him. And
9 it looked like an STD, but he said it was a scar from a
0 2 : 1 0 10 circumcision. I go here to see if I had an STD.

11 Q. Right. And where I'm trying to get to, Ms. Jones, is I'm
12 trying to find out --

13 A. And I don't know the choice words used in front of my
14 mother. I just know that yes, it was alarming to her. She was
0 2 : 1 1 15 protective. But I wasn't going to go into detail with all that
16 I was going through. I just couldn't do that to her. She was
17 sick and everything else. But if it turned out that I had
18 hepatitis or AIDS or even herpes or HPV during this visit, I
19 would want my mom. And that's why she met him for the first
0 2 : 1 1 20 time at the hospital, when I had herpes.

21 Q. Are you finished?

22 A. (Indicating).

23 Q. And so, I think the question was: How were you able -- in
24 the aftermath of your mother learning this for the first time,
0 2 : 1 2 25 sitting there in the doctor's office, didn't she just have

0 2 : 1 2 1 hundreds of questions for you, as any concerned mother would,
2 about "who is this man? What's going on in your life?" And as
3 any concerned mother, she just wouldn't take "no, I don't want
4 to talk about it" for an answer? I mean, didn't that happen?

0 2 : 1 2 5 A. She had to take my non-disclosure for an answer.

6 Q. All right. Let's go to B110.

7 Actually, before we go to that, I wanted to pick
8 up on another subject, another aspect of your testimony
9 regarding Eric Iler. You told us in fairly graphic detail

0 2 : 1 3 10 about a noise that Mr. Iler would make and cause you to come to
11 his office?

12 A. Yes.

13 Q. All right. You also told us in fairly great detail that
14 Mr. Iler was very clear to you that no one could find out about
0 2 : 1 3 15 your relationship because he would lose his job. Correct?

16 A. Yes.

17 Q. And he had been a manager at KBR for some period of time.
18 Is that right?

19 A. For a long time.

0 2 : 1 4 20 Q. And his office had two doors, did it not?

21 A. Yes.

22 Q. And --

23 A. Both of which would close.

24 Q. Yes. But as you've told us, you would have to actually go
0 2 : 1 4 25 through his office to get to your work area?

02:14

1 A. Yes.

2 Q. And there were other people who would also have to go
3 through his office to get to your work area and to their work
4 area, correct?

02:14

5 A. Yes. But he could lock the doors.

6 Q. All right. If he locks the doors, no one is going to be
7 able to get to their work area, correct?

8 A. Some of the admins could.

9 Q. But others could not, correct?

02:14

10 A. Right.

11 Q. And locking the doors with a young woman behind the door
12 sends a fairly clear signal to folks who might be wondering why
13 Mr. Iler is locking the door; does it not?

14 A. Yeah. But he would do it pretty behind -- he would make
15 sure that other people wouldn't see oftentimes, like during a
16 lunch break or after work.

02:14

17 Q. Well, I'm sure that if --

18 A. He was secret.

19 Q. I am sure that if he was doing the things that you say he
20 was doing, he would certainly not want to have anyone see him
21 do that?

02:15

22 A. Right.

23 Q. But that's really not what I was asking you. I'm trying to
24 imagine -- help me if you can -- this man who is very concerned
25 about keeping your relationship secret --

02:15

02:15

1 A. Yes.

2 Q. -- locking doors, the two of you behind locked doors,
3 blocking off access to a work area. Isn't that pretty risky
4 behavior for that manager to take with you at work?

02:15

5 A. He did it. And he would say that we were in a meeting and
6 things like that, too.

7 Q. And how common was it for a manager at KBR, in your
8 experience, to lock the doors for a meeting with a single young
9 woman?

02:16

10 A. Yeah.

11 Q. A male manager?

12 A. I only know what Eric Iler did.

13 Q. All right. Let's put -- the next two exhibits are
14 Bortz 110 and Bortz 109, if you care to look at those,

02:16

15 Ms. Jones.

16 A. Are you putting them on the screen?

17 Q. I will in a minute. But I need you to identify them for
18 the record so I can move for admission.

19 A. What number?

02:16

20 Q. B110 and B109.

21 And just to lay the predicate, both B109 and
22 B110, these are e-mails that you sent to Mr. Iler in February
23 of 2005, correct?

24 A. Yes.

02:17

25 MR. McKINNEY: And I'll move for the admission of B110

0 2 : 1 7 1 and B109.

2 MR. KELLY: I don't have any objection, your Honor.

3 MS. VORPAHL: No objection here.

4 THE COURT: Admitted without objection.

0 2 : 1 7 5 MR. McKINNEY: If we could put B110 up on the screen,
6 please, and highlight the -- from here down to the message.

7 BY MR. McKINNEY:

8 Q. So here we see on Sunday, February the 13th, 2005, you're
9 sending an e-mail to Mr. Iler: "Subject: Baby. Here is my
0 2 : 1 8 10 friend Dodie's new baby boy. He's so cute," exclamation mark?

11 A. Yes.

12 Q. And then let's just quickly --

13 A. I sent that because he always wanted to know where I was,
14 and he didn't believe that I was seeing my girlfriend's baby.

0 2 : 1 8 15 And I did that so that he would know where I really was.

16 Q. That was Sunday at 10:31 p.m. at night?

17 A. I believe that's when we got back from the deer lease.

18 Q. All right. We'll find out more about when the deer hunt --

19 A. I'm not positive. I think it was.

0 2 : 1 9 20 Q. Let's go --

21 A. Whatever the case, I sent that so he would know where I was
22 at when I sent that.

23 Q. Okay. Well, actually, if we go to B109 --

24 A. Okay.

0 2 : 1 9 25 Q. -- sent on Sunday, but about four hours earlier, reference

02:19

1 is "deer lease," and you sent some pictures from the hunting
2 trip, correct?

3 A. So probably I sent those and then went to visit that baby.
4 That's why it's four hours' difference.

02:19

5 Q. Pardon me?

6 A. It's probably likely that I sent the deer lease pictures
7 and then went to go visit the baby. That's why there's a
8 four-hour difference.

9 Q. All right. Now, let's --

02:19

10 A. But I'm not certain.

11 Q. -- turn the page on B109.

12 MR. MCKINNEY: And we can enlarge that a little bit.

13 BY MR. MCKINNEY:

14 Q. This is a picture of you being -- well, I suppose
15 pretending to have a good time?

02:20

16 A. He brought me there as a trophy. He brought me there to
17 show me off to his friends. They even wanted me to have sex
18 with him in front of them.

19 Q. I recall your testimony on that subject, but that was not
20 the question.

02:20

21 Is this a picture of you pretending to have a
22 good time?

23 A. If you look at my left eye, it's pretty red. It looks like
24 I've been crying.

02:20

25 Q. Okay.

02:20

1 A. It's pretty clear that it's very red.

2 MR. McKINNEY: And if we turn to the next page, if you
3 can turn that sideways.

4 BY MR. McKINNEY:

02:21

5 Q. This is you and Mr. Iler?

6 A. Yes.

7 Q. And you contend that you are crying in this picture?

8 A. Looks like I was crying earlier. Look at my eyes. They're
9 really red.

02:21

10 Q. Okay.

11 A. And the body language.

12 Q. And then skip to the last picture, if you would, please.

13 It's another picture of you and Mr. Iler.

14 A. It's the same picture.

02:21

15 Q. It's the same one?

16 A. Yes.

17 Q. The smile on your face in those pictures that we've looked
18 at was not a genuine smile, was it?

19 A. I had to be there as his trophy.

02:22

20 Q. You had no choice?

21 A. I cried at that deer lease a few times when I was by
22 myself, and that's why my eyes are red.

23 Q. Okay. Have you seen Mr. Iler since your return from Iraq?

24 A. Not that I remember. I know that he called when there was
25 an e-mail about me being raped that I sent to Mike.

02:22

0 2 : 2 2 1 Q. Right. You sent to who?

2 A. Mike White back in Houston. And he told everyone in
3 Houston.

4 Q. When did you send the e-mail to Mr. White?

0 2 : 2 2 5 A. In Baghdad. When I was e-mailing Pete Arroyo.

6 Q. Okay. That morning --

7 A. Yes.

8 Q. -- after. Okay. We'll get to that in a bit, then.

9 MR. McKINNEY: Your Honor, this might not be a bad
0 2 : 2 2 10 time for an afternoon break, if it's -- if you're comfortable
11 with that.

12 THE COURT: Are you at a break point?

13 MR. McKINNEY: I am at a breaking point.

14 THE COURT: All right. 15 minutes, please. All rise
0 2 : 2 3 15 for the jury.

16 *(Jury not present)*

17 THE COURT: You may be seated.

18 You may step down before the lawyers break.

19 The rest of you are free to leave, if you wish.

0 2 : 2 3 20 On the State Department investigative report, the
21 report comes in, I think under 803(8)(b). What we have -- in
22 addition to that, we have multiple hearsay statements. One of
23 them is McCormack stated that Jones had been interviewed and
24 was currently receiving medical attention. The author of the
0 2 : 2 4 25 report -- it was written by Chip Leonard. He summarizes

0 2 : 2 4 1 contacts with State Department personnel, McCormack and Michael
2 in Iraq, who were the first responders. And he has many
3 interviews that State Department personnel had in Iraq with
4 Jones, Bortz and the witnesses.

0 2 : 2 4 5 So I don't know -- I don't know what we want to
6 do with those, I think, unless let's go through them one by one
7 after hours.

8 MR. McKINNEY: My intent, your Honor, is to only
9 offer, at this time, portions of the State Department
0 2 : 2 4 10 investigation where the reporter is reporting his or her direct
11 interview of a witness, not any interviews of a witness, not
12 any second or third degree hearsay, just the actual witness
13 interview itself, which is an observation made pursuant to law.

14 THE COURT: Okay. But let's -- well, Leonard's
0 2 : 2 5 15 statement would come in because of 803(8)(b). But a statement
16 to Leonard, how would that come in?

17 MR. McKINNEY: And I'm not -- I will not even offer
18 that in my examination.

19 THE COURT: All right. Okay.

0 2 : 2 5 20 Yes.

21 MS. HOLCOMBE: Your Honor, KBR defendants would like
22 to move to enter in the entire Department of State reports on a
23 couple of grounds. One, your Honor, pursuant to -- if your
24 Honor has read *Rodriguez vs. City of Houston* -- again, it's
0 2 : 2 5 25 just a Southern District of Texas case, not a Fifth Circuit.

0 2 : 2 5 1 However, in that case they are looking at a report similar to
2 the kind of report we're looking at here, where it dealt with
3 an internal investigation. It was an IAD report in a sexual
4 harassment case. The only differences in that case, the
0 2 : 2 6 5 plaintiff wanted the whole report in. And here it's the
6 defendants.

7 And in that case, they talked about, in
8 Footnote 2, how the defendant objected to that internal
9 investigation report because, quote, it contains multiple
0 2 : 2 6 10 levels of hearsay and is not material to any issue in this
11 action. And the Court found that the objection was without
12 merit. That the disputed internal affairs division report
13 contained, quote, factual findings resulting from an
14 investigation made pursuant to authority granted by law. And
0 2 : 2 6 15 that the defendant -- again, the one objecting in that case --
16 had not shown that the sources of information in the report
17 lacked trustworthiness, and the report was therefore
18 admissible. And then it said -- and so, therefore, your Honor,
19 my first ground is that under 803(8)(c), the report in its
0 2 : 2 6 20 entirety, including the statements that were made pursuant to
21 the investigation, should all come in in their entirety. But
22 to answer --

23 THE COURT: That passage you read, though, didn't deal
24 with the point I'm trying to deal with. You can't just say the
0 2 : 2 7 25 whole report comes in. I think the report comes in subject to

0 2 : 2 7 1 the continuing compliance with other rules of hearsay. And one
2 of those is that we have statements contained in the report
3 that are, again, sometimes several layers of hearsay. I
4 didn't -- who was the judge in that case?

0 2 : 2 7 5 MS. HOLCOMBE: Your Honor, it was Magistrate Judge
6 Milloy, I believe. Yes, your Honor.

7 THE COURT: Does she ever deal with this issue in the
8 report of a hearsay upon hearsay within the report.

9 MS. HOLCOMBE: Your Honor, the entire report, from my
0 2 : 2 7 10 understanding of the case -- and I certainly wouldn't want to
11 misrepresent it. But my understanding is the entire report was
12 not redacted, and that the --

13 THE COURT: I know. I understand you to say that.
14 But what was the basis for that decision?

0 2 : 2 7 15 MS. HOLCOMBE: The basis of the decision was
16 803(8)(c). There were -- inside this report, there were
17 statements by other people, including five coworkers -- or
18 sorry -- that Rodriguez had complained to five coworkers about
19 the behavior, the alleged sexual harassing behavior.

0 2 : 2 8 20 Your Honor, to address your other concern
21 regarding the hearsay statements -- alleged hearsay statements
22 within the report, under 803(1), the present sense impression
23 exception --

24 THE COURT: No, these were taken a long time
0 2 : 2 8 25 afterwards.

0 2 : 2 8 1 MS. MORRIS: Your Honor, if I could just address that
2 issue quickly.

3 THE COURT: Yes.

4 MS. MORRIS: I have not read the *Rodriguez* case, but
0 2 : 2 8 5 my research tells me that when there's a report with factual
6 findings where the basis upon those findings is hearsay
7 statements or interviews with witnesses and it's a summary of
8 what that investigative person found, that has been admitted.
9 It's not like Mr. McKinney is saying an investigating officer
0 2 : 2 8 10 writes down exactly what someone is saying and then it's
11 allowed to be presented in court. It's basically an
12 evaluative -- I think it's called an evaluative report, where
13 the basis of their findings is hearsay statements -- is based
14 on hearsay statements.

0 2 : 2 9 15 THE COURT: So, on that theory, what comes in and what
16 doesn't?

17 MS. MORRIS: If there was a statement -- if there is a
18 factual finding by the officer where she says, "I found" --
19 let's say it's a car accident. "I arrived at the scene. I
0 2 : 2 9 20 interviewed three witnesses. I observed the damage to the
21 cars. My findings are that Driver A was at fault here, based
22 upon those hearsay statements and my observations." That's her
23 finding of fact.

24 THE COURT: And what would come in, just the finding
0 2 : 2 9 25 of fact?

0 2 : 2 9 1 MS. MORRIS: Yes. Even though it's based on a hearsay
2 statement.

3 MS. HOLCOMBE: Your Honor, I have another reason why
4 the entire report should come in. Some of the statements will
0 2 : 2 9 5 be presented in court through testimony, either live or by
6 deposition; so, therefore, those statements will not be
7 hearsay. The other statements from deponents that will not be
8 here -- or declarants that will not be here in court would fall
9 under 807, as they would be offered to prove an evidence of a
0 2 : 3 0 10 material fact.

11 For example, Officer Karen Diaz-Pelot, her
12 statements regarding Ms. Jones and what took place after the
13 bowling alley incident are offered to prove a material fact in
14 this case. And, your Honor, that is a fact as to her
0 2 : 3 0 15 credibility and her repetition habit of telling statements and
16 recanting.

17 THE COURT: So you're talking about the residual --

18 MS. HOLCOMBE: Yes, your Honor.

19 THE COURT: Well, as to your first point, a prior
0 2 : 3 0 20 statement by a witness would come in, it's still hearsay. It's
21 doesn't make it -- it's not -- it doesn't get around the
22 hearsay exception simply because the declarant is going to
23 testify. It would come in under 803(d)(1) in order to show
24 that it was either inconsistent with declarant's testimony or
0 2 : 3 1 25 consistent with the declarant's testimony and is offered to

0 2 : 3 1 1 rebut an express or implied charge against declarant of recent
2 fabrication or improper influence. It would come in then but
3 only then.

4 An out-of-court statement by anyone, even
0 2 : 3 1 5 somebody who's coming here to testify, is still hearsay.
6 And -- well, it would ordinarily be hearsay except for what
7 801(d)(1) says, which is it will come in if it was inconsistent
8 with what was said in Court and, therefore, has impeachment
9 value or it was consistent with what the declarant is saying on
0 2 : 3 1 10 the stand in order to rebut an express or implied suggestion of
11 recent fabrication. And it may be those statements do come in
12 then; but we would have to take them one by one, I think.

13 Well, we'll feel our way along. Okay.

14 *(Recess was taken from 2:31 p.m. to 2:46 p.m.)*

0 2 : 4 6 15 *(Jury present)*

16 THE COURT: Members of the jury, you may be seated.

17 You may resume your inquiry, Mr. McKinney.

18 MR. MCKINNEY: May it please the Court.

19 BY MR. MCKINNEY:

0 2 : 4 6 20 Q. Ms. Jones, over the break, I went back and checked my notes
21 on some of the things you and I have talked about so far; and
22 there are a couple of points I would like to go back and cover
23 quickly, hopefully.

24 At the beginning -- or earlier this afternoon we
0 2 : 4 6 25 discussed your testimony that you had the -- your first

0 2 : 4 7 1 intercourse with Mr. Iler was in the December time frame, and
2 that other sexual activities started in the September, October
3 time frame. Do you recall that?

4 A. Yes.

0 2 : 4 7 5 Q. And I would like to put the back end on that. I would like
6 to nail down for our jury when the sexual activity between you
7 and Mr. Iler ceased. And I believe that it quit in -- or the
8 sexual activity ended in March, when Mr. Iler sent you an
9 e-mail stating that you were no longer needed at the event
0 2 : 4 7 10 center. Is that correct?

11 A. I think so.

12 Q. All right.

13 A. Not a hundred percent, though.

14 Q. Pardon me?

0 2 : 4 7 15 A. I'm not a hundred percent.

16 Q. Well, let me just show you quickly your deposition
17 testimony and see if that refreshes your memory. I asked you
18 the question at Page 191, Line 8: "Do I understand correctly
19 that your relationship with Eric Iler began sometime in the
0 2 : 4 8 20 September, October 2004 time frame?"

21 Your answer: "It was either -- I don't believe
22 that we had intercourse until December-ish, but there was
23 sexual activity somewhere around that time.

24 "QUESTION: September/October?

0 2 : 4 8 25 "ANSWER: I believe so."

0 2 : 4 8 1 And then I asked you: "All right. Did the
2 sexual -- sexual activity continue until as late as May or June
3 of 2005? What was the cutoff date, please, ma'am?"

0 2 : 4 8 4 And you testified: "I believe it was March. It
5 was when he sent an e-mail stating that I was no longer needed
6 at the event center."

7 A. Yes, I said I believe it was. I'm pretty sure, but I'm not
8 a hundred percent. I'm really bad with remembering stuff.
9 So --

0 2 : 4 9 10 Q. Well, I see where you said you believed it was in March but
11 it seems -- and tell me if I'm wrong --

12 MR. KELLY: This improper --

13 BY MR. McKINNEY:

14 Q. -- but isn't it fairly --

0 2 : 4 9 15 MR. KELLY: Sorry.

16 THE COURT: Just a second. We have an objection.

17 MR. KELLY: This is improper impeachment. She's
18 testified consistently what she's been shown. It's also
19 improper to show the deposition in its entirety -- or outside
0 2 : 4 9 20 of what he's actually asking, to the jury.

21 MR. McKINNEY: I'm refreshing the witness' recall
22 because she has told us she has a difficult time with dates and
23 whatnot and --

24 THE COURT: Well, why don't you show her the
0 2 : 4 9 25 deposition?

02:49

1

MR. MCKINNEY: I'll be happy to.

2

May I approach, your Honor?

3

THE COURT: Yes, you may.

4

BY MR. MCKINNEY:

02:49

5

Q. Ms. Jones, right here where it says, "I believe it was

6

March." And then the next sentence, "It was when he sent me an

7

e-mail stating that I was no longer needed at the event

8

center."

9

It was the e-mail that, in your mind, tells you

02:50

10

when the sexual activity stopped. Is that correct?

11

A. Yeah, but --

12

Q. And I'm going to show you the e-mail. We'll see the date

13

on that.

14

A. Yeah, I know. But it may have -- I think it may have

02:50

15

resumed sometime after that until I got my transfer. But,

16

yeah, it stopped at that point; but I think that it may have

17

resumed.

18

Q. Ms. Jones, you understood my question, I was asking you for

19

the cutoff date on sexual activity?

02:50

20

A. Right.

21

Q. And you told me it was when you got that e-mail, correct?

22

A. Right, but I think it may have resumed until I got my

23

transfer.

24

Q. You neglected to mention that in response to my question,

02:51

25

correct?

02:51 1 A. I just remembered that. I'm sorry.

2 MR. McKINNEY: Your Honor, I move for the admission of
3 Bortz Exhibits 250 and 251.

4 MR. KELLY: No objection, your Honor.

02:51 5 THE COURT: Admitted without objection.

6 BY MR. McKINNEY:

7 Q. Ms. Jones, can you see this exhibit? This is Exhibit 251
8 that I'm referring to.

9 A. Yes.

02:52 10 Q. And it appears to be from Eric Iler to you, dated
11 March 21st, 2005. Do you see that?

12 A. I do.

13 Q. And is this the e-mail where Mr. Iler -- that Mr. Iler sent
14 to you telling you it would no longer be necessary for you to
02:52 15 come to the event center?

16 A. On Mondays -- yeah.

17 Q. Now, Ms. Jones, it was also called to my attention -- and
18 maybe I just missed this in your testimony before our break.

19 We talked about the deer camp pictures and the pictures of
02:53 20 Dodie's baby, which we did not show those pictures in your
21 examination. Are those pictures made in the same weekend?

22 A. I don't know. Possibly.

23 Q. All right. Well, I asked you -- as you'll recall, the two
24 e-mails were both dated February the 13th?

02:53 25 A. Right.

0 2 : 5 3 1 Q. And one shows you dressed for hunting, the other shows you
2 dressed a little bit differently?

3 A. Right.

4 Q. And can you help us understand the time that might have
0 2 : 5 3 5 passed between the deer camp pictures and the pictures of
6 Dodie's baby?

7 A. I guess I don't remember. I just remember having to send
8 those to state where I was at.

9 Q. It's something I never would have noticed.

0 2 : 5 4 10 MR. McKINNEY: But if we could put up Exhibit B110.

11 BY MR. McKINNEY:

12 Q. And actually, the picture that is attached, the first
13 picture attached to B110, I believe you told us that you sent
14 this picture to Mr. Iler to establish your whereabouts on that
0 2 : 5 4 15 Sunday. Is that correct, or did I misunderstand you?

16 A. Whenever I sent the e-mail, it was to establish my
17 whereabouts, yes.

18 Q. All right. Well, if the e-mail was sent on February the
19 13th --

0 2 : 5 4 20 MR. McKINNEY: If we could go back to the first page.

21 BY MR. McKINNEY:

22 Q. The e-mail was sent late in the evening on February the
23 13th. Is it your testimony to our jury that you were trying to
24 show to Mr. Iler where you had been that evening?

0 2 : 5 5 25 A. Yeah, but I don't know if I was there that evening. I just

02:55

1 didn't want to see Eric Iler.

2 Q. Got you. So, it could have been before February the 13th
3 that you actually went out to see Dodie's baby?

4 A. Possibly.

02:55

5 Q. All right. Now, if we could go back to the photograph.
6 And again, I promise you this is not something I would have
7 normally noticed; but your hair in this picture, is this your
8 hair or is there --

9 A. No.

02:55

10 Q. -- some additional hair there?

11 A. There's additional hair there.

12 Q. All right. Because if we can go to B109 --

13 A. That was a clip-on extension. And you can tell from the
14 picture it wasn't a very good one.

02:56

15 Q. Like I say, this was obviously a note that was passed to me
16 because this would have blown right by me. But if we can go
17 now to B109 and the picture of you there.

18 MR. McKINNEY: May I approach the witness, your Honor?

19 THE COURT: You may.

02:56

20 A. I still have that hair extension if you need it.

21 BY MR. McKINNEY:

22 Q. No, I don't need it.

23 A. Okay.

24 Q. I'm just --

02:56

25 A. Just so that you know for sure that it wasn't my hair.

02:56 1 Q. I get in trouble all the time for missing changes in hair.

2 So, this is one that's been called to my
3 attention, but it appears -- and tell me if we're wrong here --

4 A. It appears to be the same color. And that's a big deal
02:57 5 because I change my hair color all the time.

6 Q. I'm more focused on the length of your hair in the deer
7 lease picture compared to the length of your hair in the
8 Dodie's baby picture. And I realize you have an attachment
9 there.

02:57 10 A. Yes.

11 Q. Is the attachment, does that account for the difference in
12 length?

13 A. Yes. It's a -- it's a clip-on, right here. And you can
14 see it, and it's fake.

02:57 15 Q. All right. Again, just a couple of more questions
16 regarding the sex that you say that you were forced to have at
17 the office with Mr. Iler. You, in response to one of --
18 actually, I believe Judge Ellison's questions clarifying your
19 testimony, you told us in your deposition that that was oral
02:57 20 sex, correct?

21 A. It was that and other foreplay --

22 Q. All right. But --

23 A. -- where there was touching involved.

24 Q. -- not intercourse? Pardon me?

02:58 25 A. There was genital-to-genital involvement, just not actual

02:58

1 intercourse.

2 Q. All right. And you also told us that this happened between
3 one and 10 times; that is, more than once and less than 10
4 times at the office, correct?

02:58

5 A. Right.

6 Q. Do you recall when Mr. Iler's class reunion was that you
7 described --

8 A. I wish I knew.

9 Q. -- so vividly?

02:58

10 A. I know he was class of 1984, which was the year I was born.

11 Q. Right. So, it was sometime in 2004?

12 A. (Nodding head.)

13 Q. Do you recall what month?

14 A. Well, generally those happen like around November, but I
15 don't know specifically when his was.

02:59

16 Q. All right.

17 A. The class reunions generally happen during Thanksgiving
18 breaks and stuff.

19 Q. Let's now move to Iraq.

02:59

20 A. Okay.

21 Q. As I understand what you've told us, the first person you
22 saw the morning you woke up was Charles Bortz?

23 A. Yes.

24 Q. The next person you saw was Pete Arroyo?

03:00

25 A. I don't know. Because the next person -- the person I told

03:00

1 about it was Pete Arroyo.

2 Q. All right. Well, who was the next person that you saw?

3 A. I went into the office. There was possibly people around.

4 Q. Well, didn't Pete Arroyo drive you to the office?

03:00

5 A. Oh, yes. I'm sorry.

6 Q. So, starting from the morning when you woke up, in order,
7 the people that you saw would be first Charles Bortz, then Pete
8 Arroyo, correct?

9 A. Correct.

03:00

10 Q. And then people at the office?

11 A. Correct.

12 Q. Would that include a man named Anthony Adams?

13 A. I don't know. I've seen his testimony and everything, but
14 I don't remember.

03:00

15 Q. You don't remember him?

16 A. Now, if he comes -- I haven't seen his video. If I saw the
17 video, maybe.

18 Q. African-American male?

19 A. Oh, no, I don't remember him.

03:01

20 Q. All right.

21 A. Huh-uh, not that morning.

22 Q. Do you remember any of the people that you spoke with at
23 work that morning; that is, actually at your office, person to
24 person?

03:01

25 A. No.

03:01 1 Q. The next person you saw was Kristen -- sorry, was Pete
2 Arroyo again?

3 A. Pete Arroyo again, yes.

4 Q. And then Kristen Rumba?

03:01 5 A. Yes.

6 Q. And some KBR security people?

7 A. No.

8 Q. Who would be next?

9 A. Wait. Maybe.

03:01 10 Q. Were you not escorted to the clinic by some KBR security
11 people?

12 A. Yes.

13 Q. All right. And Pete Arroyo?

14 A. Yes.

03:01 15 Q. And Ms. Rumba?

16 A. Yes.

17 Q. And then you saw Dr. Schulz?

18 A. Yes.

03:01 19 Q. And from there you were taken by KBR security to the
20 container that you described?

21 A. Yes.

22 Q. Okay. So, that's the general chronology of that morning?

23 A. Right.

03:02 24 Q. We're going to be comparing, just as background here,
25 statements that have been attributed to you that day.

03:02 1 A. What do you mean?

2 Q. And to sort of review the bidding, one statement that has
3 been attributed to you is the statement that -- or the history
4 that Kristen Rumba took, correct?

03:02 5 A. That's what Pete Arroyo told Kristen Rumba, yes.

6 Q. Yes. That's your clear position on that, is that Pete
7 Arroyo communicated that information to Kristen Rumba, correct?

8 A. Correct.

9 Q. And it's also your position that Ms. Rumba then reported to
03:03 10 Dr. Schulz what was said, correct?

11 A. Uh-huh, yes.

12 Q. You're aware -- or are you aware that Ms. Rumba and
13 Dr. Schulz both directly dispute your position in that regard?

03:03 14 A. I'm aware that Kristen Rumba says that she generally is a
15 PA, I believe. She generally gives the information to the
16 doctor. Now, Dr. Jodi Schulz, I'm aware that she would not
17 recognize me if she saw me. She doesn't know my hair color or
18 anything. So, she was just directly reading from her notes.
19 So, with that said, I don't think she has a clear memory on it
03:04 20 from her --

21 Q. Yes, ma'am. I actually was not asking you that question.
22 I was asking you if you understand that both Dr. Schulz and
23 Ms. Rumba directly dispute your position that the events
24 reported to them originated from Pete Arroyo and Kristen Rumba
03:04 25 and not from you?

03:04 1 A. But Pete Arroyo doesn't dispute that.

2 Q. We'll see.

3 MR. McKINNEY: If we could put up Exhibit 52, please.

4 Well, actually, let's-- not Exhibit 52, rather
03:05 5 Exhibit 98, Bortz 98. And that would be 00960. Please go to
6 that, but don't put it up.

7 Judge, I can approach and explain to the Court
8 what this is or I can tell the Court from here without getting
9 into the substance of it.

03:05 10 THE COURT: Mr. Kelly?

11 MR. KELLY: Well, I think this is the subject of what
12 we discussed during the break, your Honor; and so, it might be
13 something to approach on.

14 THE COURT: Okay. All right.

03:05 15 MR. KELLY: I'm not sure where he's going.

16 MR. McKINNEY: I think it can be done without excusing
17 the jury. I'm not going to go into the substance of it, but
18 it's how ever the Court wants to proceed.

19 THE COURT: Are we talking about a document or a
03:05 20 photograph?

21 MS. HOLCOMBE: Document.

22 THE COURT: Well, first show it to her; and I'll see
23 it before you show it to the jury.

24 BY MR. McKINNEY:

03:05 25 Q. Ms. Jones, do you recognize this document as coming from

03:05 1 the State Department's final investigation of your allegations,
2 which you have previously told us that you have read?

3 A. Yes. I was talking about what Pete Arroyo said in his
4 deposition, though.

03:06 5 MR. McKINNEY: The portion that I wish to read to the
6 witness is the account taken from Mr. Arroyo on -- let me make
7 sure I have the date right -- August the 6th of 2005, about
8 11 days after -- sorry -- about nine days after these
9 allegations --

03:06 10 THE COURT: This is his -- Mr. Arroyo's statement? Is
11 that --

12 MR. McKINNEY: To the agent's present sense impression
13 is the basis that I'm offering it because of the proximity and
14 time.

03:06 15 THE COURT: No. "Present sense impression" means a
16 statement made at the time of the event or condition. It's not
17 a statement made two weeks later about the present sense
18 impression. So, it doesn't come in under that exception.

19 MR. McKINNEY: I also offer it simply as an
03:07 20 observation made pursuant to law.

21 THE COURT: Well, this is exactly the problem I was
22 trying to identify at the break; and I think it cannot come in.
23 With respect to what Judge Milloy held in the *Rodriguez* case,
24 one thing that was left out was the most important sentence in
03:07 25 the opinion; and that is, Judge Milloy said to the extent that

03:07 1 any individual statement within the exhibit is hearsay,
2 immaterial or irrelevant, she wasn't going to consider it. So,
3 no, it can't come in.

4 BY MR. McKINNEY:

03:08 5 Q. When Pete Arroyo picked you up that morning, did you get
6 into his vehicle and mention to him having socialized with some
7 individuals that you had met the previous night and that you
8 had drunk a cocktail?

9 A. I don't remember the exact words that I used.

03:08 10 Q. Well, do you remember at all the ride to work with Pete
11 Arroyo that morning?

12 A. In the morning?

13 Q. Yes.

14 A. Barely.

03:08 15 Q. Do you remember anything that was discussed whatsoever?

16 A. I don't know.

17 Q. Did you tell Mr. Arroyo that you and Mr. Bortz had
18 discussed the fact that he was going to break up with his
19 girlfriend because he wanted to start dating you? Did you tell
03:09 20 Mr. Arroyo that?

21 A. I don't remember that at all.

22 Q. Did you -- do you recall --

23 A. I don't even hardly remember the ride to work. I was still
24 under the influence of whatever they decided to give me in my
03:09 25 drink.

03:09 1 Q. Yes, ma'am. Do you recall Mr. Arroyo stating to you that
2 he informed you that you should be cautious because you would
3 be working with Vanetta and he warned you about camp gossip and
4 that it would not look good for your career. Do you recall
03:09 5 Mr. Arroyo making that statement to you?
6 A. I don't recall any statements in the car. I'm sorry. I
7 think I was still very groggy at that point.
8 Q. All right. Do you recall what you were wearing that day?
9 Was it jeans and a T-shirt?
03:10 10 A. It was jeans and it was a light shirt.
11 Q. Did you tell Pete Arroyo that on Wednesday night you had
12 partied with five KBR firemen in your room? Did you tell Pete
13 Arroyo that?
14 A. His deduction.
03:10 15 Q. I'm asking you if you told him.
16 A. Those were not my words, absolutely were not my words.
17 Q. Did you tell him that you had a drink that you believed to
18 be whiskey?
19 A. I don't recall that.
03:11 20 Q. Did you tell Mr. Arroyo that you woke up that morning with
21 Charles Bortz in your bed?
22 A. Those weren't my choice words.
23 Q. And that you had no memories of what had happened the night
24 before, did you tell Mr. Arroyo that?
03:11 25 A. I'm sure I did tell him that.

03:11 1 Q. And did you tell Mr. Arroyo that -- about the conversation
2 between you and Mr. Bortz about whether or not you had had sex?
3 A. I don't remember. Probably.

03:11 4 Q. Did you tell Mr. Arroyo about an individual making a
5 statement about the drug Rohypnol?
6 A. Yes.

7 Q. You did tell Mr. Arroyo about that?
8 A. I did.

9 Q. You do have that recall?
03:11 10 A. I do. That was a different conversation, different place,
11 though. We're talking about two different conversations. One
12 was in the morning, when I have no memory and he's picking me
13 up from work. And, then, we were talking about another
14 conversation when --

03:12 15 Q. Yes. This is the conversation --
16 A. -- the fog starts to lift --
17 Q. You're correct, this is --
18 A. -- later in --
19 Q. -- the second conversation --

03:12 20 A. -- the day. Okay.
21 Q. Yes.
22 A. Just wanted to make that clear.

23 Q. Yes. On the ride after -- and we'll fill in all the
24 details in a little bit, but I'm just trying to get the big
03:12 25 picture here.

03:12 1 Did you tell Mr. Arroyo in the second
2 conversation that you had with him that you were concerned that
3 since you had no memories, you might have had sex with all five
4 individuals? Do you recall making that statement to him?

03:12 5 A. I don't think I used the word "sex." I think I used the
6 word "rape."

7 Q. All right. And did you also tell --

8 A. I don't even know if those were my choice words but --

9 Q. Did you also tell Mr. Arroyo that you were concerned that
03:13 10 you might come in to contact with a sexually transmitted
11 disease?

12 A. I don't recall that.

13 Q. Now let's go to Exhibit 52. That's a joint exhibit.

14 MR. McKINNEY: Can we get that up, please? You don't
03:13 15 have Exhibit 52, Joint 52?

16 Having exhibit malfunctions again. I'm sorry,
17 your Honor.

18 BY MR. McKINNEY:

19 Q. Do you recognize the exhibit that we have up on the screen?

03:14 20 A. I do.

21 Q. And this is the statement that you say Ms. Rumba got
22 directly from Pete Arroyo, correct?

23 A. Yes.

24 Q. Did you provide any information whatsoever to Ms. Rumba?

03:15 25 A. That I was 20.

03:15 1 Q. Anything else?

2 A. All I remember is him telling her what happened. I just
3 remember Arroyo saying it.

4 Q. All right.

03:15 5 A. I started to say, yes, that I was 20; and then he said that
6 I was 22.

7 Q. Okay. Now, this statement or this history that Ms. Rumba
8 took was before anyone began actually investigating your
9 allegations, correct?

03:15 10 A. Correct.

11 Q. And what it says -- and we've been over this before, but I
12 want to ask you some questions about it.

13 "A 22-year-old female states she was in her room
14 last night at around 10:00 o'clock. Four firemen came to her
03:16 15 room and offered her a drink. Patient states she had already
16 had some alcohol, quote, one big one, closed quote, prior. She
17 states she could taste alcohol in the drink offered. The
18 firemen joked about Rohypnol and that they were saving it for
19 Dubai. Patient states she doesn't remember anything after
03:16 20 that. She woke up feeling sore and there was one man in her
21 room that said they'd had sex. Patient has been in country two
22 days. Physical exam deferred."

23 I don't know what "AP" means, but "possible rape,
24 escorted to CSH." Now --

03:17 25 A. I did tell her that I was allergic to all antibiotics and

03:17 1 Phenergan.

2 Q. Yes. I was going to ask you about that. Apparently the
3 question was raised as to your allergies and medications; and
4 that information certainly couldn't have come from Pete Arroyo,
03:17 5 correct?

6 A. That came from me.

7 Q. All right. Now, to get back to the body of Ms. Rumba's
8 document here and --

9 MR. McKINNEY: And I move for the exhibit [sic] of
03:17 10 Joint 52.

11 MR. KELLY: No objection, your Honor.

12 THE COURT: It's admitted without objection.

13 BY MR. McKINNEY:

14 Q. She begins by saying 20 or 22 "year old female states she
03:18 15 was in her room last night"; that is, she's writing down that
16 you are saying this, is she not?

17 A. That's not what happened.

18 Q. I'm just asking you if you would agree with me that the
19 plain language of the words that Ms. Rumba chose indicates that
03:18 20 you were relating this story, not Pete Arroyo, correct?

21 A. It appears that way; but that's not the case, yes.

22 Q. All right.

23 A. It does appear that way.

24 Q. The next sentence begins -- well, to complete the sentence,
03:18 25 "Patient states she was in her room last night around

03:18 1 10:00 o'clock. Four firemen came to her room and offered her a
2 drink."

3 The next sentence, like the first sentence
4 begins, quote, "Patient states she had already had some
03:19 5 alcohol," quote, "one big one," close quote, "prior." That's
6 the end of that sentence. And again, it begins "patient
7 states," does it not?

8 A. It does.

9 Q. And if we didn't have you here to tell us that it was
03:19 10 actually Pete Arroyo doing the talking, any reasonable reader
11 of this document would conclude that you were passing along
12 this information, not Pete Arroyo?

13 MR. KELLY: Calls for speculation, your Honor.

14 THE COURT: Well, she's plenty smart enough to say she
03:19 15 doesn't know if she doesn't know.

16 BY MR. McKINNEY:

17 Q. Let me repeat the question. If we just look at this
18 document, it looks like you're the person who is doing the
19 talking, correct?

03:19 20 A. Yes, sir.

21 Q. It's only because you're here to tell us that Pete Arroyo
22 was actually doing the talking that we might draw a different
23 conclusion. Fair statement?

24 A. Pete Arroyo's testimony also says that, but yes.

03:20 25 Q. If we turn to Joint Exhibit 105 and -- the second page of

03:20 1 Joint Exhibit 105.

2 A. Is that one I need to go to first?

3 Q. Well, we're going to have to put it up on the screen
4 because you don't have it there in front of you.

03:20 5 A. Oh, no problem.

6 MR. McKINNEY: But I believe it's in evidence. And if
7 we could enlarge the highlighted portion at the bottom.

8 Actually, at the bottom, please.

9 BY MR. McKINNEY:

03:21 10 Q. Item 26 is where Dr. Schulz fills in the blank that says:
11 "Victim's Description of Alleged Assault."

12 Do you see that?

13 A. Yes.

14 Q. It says, "10:00 p.m., patient asleep, five men knocked on
03:21 15 door and were allowed in, offered drinks. Patient accepted one
16 drink, alleged assailants joking about Rohypnol, stated it
17 was" -- "stated something to the effect that they were saving
18 it for another location. Patient remembers nothing until 6:30
19 the next morning. One alleged assailant was present, told the
03:22 20 patient they had had sex," words to that effect.

21 A. Okay.

22 Q. Again, this appears in Dr. Schulz' record as your
23 description of the events of the alleged assault, not Kristen
24 Rumba's, correct?

03:22 25 A. Can you clarify? I'm sorry.

03:22 1 Q. Well, the blank that's being filled in here is "Victim's
2 Description of Alleged Assault." And you would be the victim,
3 correct?

4 A. Yes. But even if she did write it -- I mean, that's
03:22 5 pretyped. Even if she told her, that's pretyped.

6 Q. We'll get there -- I agree that's a form document --

7 A. It's a form.

8 Q. -- and the form says, "Victim's Description of Alleged
9 Assault"?

03:23 10 A. Right.

11 Q. The part that the doctor has filled in here does not
12 indicate that anyone other than the victim is reporting the
13 information, correct?

14 A. Doesn't indicate that, correct.

03:23 15 Q. I'm trying to think how to phrase the question. Bear with
16 me.

17 A. Take your time.

18 Q. Your testimony to our jury in response to Mr. Kelly's
19 questions is that you were at a gathering the night before and
03:24 20 you had two sips from a drink and no recollection after taking
21 those two sips, correct?

22 A. I think so.

23 Q. And that is part of what you told Jamie Armstrong when she
24 came to see you and told you that a statement was needed to
03:24 25 investigate your case. And she told you all these other

03:24 1 things, apparently, that you testified to. But one of the
2 things she told you was that she needed a statement because
3 your case needed to be investigated, correct?

4 A. By KBR?

03:24 5 Q. Yes.

6 A. Yes.

7 Q. Now, in fact, you had been at a social gathering the night
8 before and Charles Bortz was there and a number of other people
9 were there. That's -- that, in fact, did happen, did it not?

03:25 10 A. I was at a social gathering outside on a curb and by picnic
11 tables.

12 Q. Correct. What did not happen is four or five men did not
13 come to your room and you let them in and they gave you a drink
14 and you remember nothing else. Even though there's two
03:25 15 statements to that effect, you're saying that that did not
16 happen?

17 A. That's Pete Arroyo saying that, because I was outside. I
18 was talking on the phone, and I said that a firefighter was
19 walking up with another person. And, so, he assumed for some
03:25 20 reason that I was inside and that that they knocked on my door.

21 Q. And actually, that was not the question, Ms. Jones. I'm
22 simply asking you if the histories recorded by Ms. Rumba and by
23 Dr. Schulz to the effect that four or five men came to your
24 room while you were asleep, knocked on the door, you opened the
03:26 25 door, you let them in, they gave you a drink and you remember

03:26 1 nothing else after that, those histories are, according to you,
2 incorrect, correct?

3 A. Well, they didn't come from me.

4 Q. They didn't come from you and they're not true?

03:26 5 A. They didn't knock on my door.

6 Q. Well, no -- four or five men didn't come to your room
7 either, did they?

8 A. I don't know what happened when I lost my memory.

9 Q. Well, according to -- okay. As -- let me back up.

03:26 10 MR. McKINNEY: Going back to Exhibit 52, if we could
11 just take that off.

12 BY MR. McKINNEY:

13 Q. Again, this is Joint Exhibit 52. It's on the screen in
14 front of you.

03:26 15 A. Okay.

16 Q. And it describes -- apparently in your words, but you say
17 it was Pete Arroyo's words. But it describes a completely
18 different route to -- or a completely different event leading
19 up to your loss of memory. It describes four men, four
03:27 20 firemen, coming to your room and you letting them in and them
21 making you a drink and joking about Rohypnol and you not
22 remembering anything afterwards, correct?

23 A. That's what it basically says on there, yes.

24 Q. Yes.

03:27 25 MR. McKINNEY: Now, I am now, your Honor, going to

03:28 1 question the witness on Bortz Exhibit 69. It is a State
2 Department letter --

3 THE COURT: Okay. Subject to the usual guidelines
4 that we've gone over.

03:28 5 MR. McKINNEY: Well, it discusses, in the body of the
6 letter, statements that Ms. Jones made to investigators.

7 THE COURT: Well, that would come in.

8 MR. McKINNEY: Exhibit B69.

9 MR. KELLY: (Indicating.)

03:28 10 MR. McKINNEY: I move to offer B69 into evidence.

11 THE COURT: Any objection?

12 MR. KELLY: Just a moment, your Honor. Let me read
13 the whole thing.

14 MS. VORPAHL: No objection here.

03:29 15 MR. KELLY: No objection, your Honor.

16 THE COURT: All right. Admitted without objection.

17 MR. McKINNEY: Can we put that up on the screen,
18 please?

19 BY MR. McKINNEY:

03:29 20 Q. As you can see, this is a letter from the State Department
21 to the Federal Bureau of Investigation concerning your case.
22 And it is dated August 2nd, 2005. You can see that up in the
23 right-hand corner?

24 A. Okay.

03:29 25 Q. Do you see that?

03:29 1 A. Yeah.

2 Q. The letter begins: "Dear Ms. Colatosti, I am requesting
3 the assistance of the FBI's laboratory in processing a rape kit
4 as it pertains to a sensitive investigation being conducted by
03:30 5 this office. On the evening of Friday, July 27th, 2005,
6 Charles David Bortz allegedly sexually assaulted Jamie Leigh
7 Jones on a USG compound occupied by KBR, paren, Kellogg
8 Brown & Root, closed paren, in Baghdad, Iraq. Both Bortz and
9 Jones are employees of KBR under a Department of State
03:30 10 contract."

11 Other than the part about requesting assistance
12 in processing a rape kit, does this initial paragraph
13 accurately describe -- that is, do you have any issues with or
14 have a problem with any of the description of the date,
03:30 15 Mr. Bortz, yourself, you're both employees of KBR, et cetera?
16 Does the first paragraph seem accurate to you?

17 A. I thought I was under an Army contract, but I don't know.

18 Q. Let's look at the second paragraph.

19 A. For sure.

03:31 20 Q. "According to the victim's statement, both she and Bortz
21 and several other KBR employees were drinking at a common area
22 on the evening of Friday, July 27, 2005. The next thing Jones
23 can recall is waking up naked and in bed with Bortz. Jones
24 asked Bortz if they had intercourse. He responded in the
03:31 25 affirmative. Jones then asked if he used protection, and he

03:31 1 responded in the negative."

2 Now, you probably dispute waking up naked and in
3 bed with Bortz; but the rest of that sentence, does that fairly
4 summarize the report you gave to the Department of State
03:31 5 investigators?

6 A. Yeah.

7 Q. Okay. Let's look at the next paragraph. Because this is
8 the important one.

9 "Jones initially reported to the US military
03:32 10 physician who examined her that five KBR firefighters came to
11 her room and offered her a drink and claimed that she should
12 not worry, there were no ruffies in it. Prior to her medevac,
13 Jones stated to a DS agent that she lied to the US military
14 doctor" -- sorry, let me rephrase that -- restate that. "Prior
03:32 15 to her medevac, Jones stated to a DS" -- that is, a Department
16 of State agent -- "that she lied to the US military doctor
17 because he was pressuring her for a story as to what happened."

18 Now, I want to ask you about that. Because here
19 we have a report, do we not, from someone with the Department
03:32 20 of State to someone with the Federal Bureau of Investigation
21 putting down in black and white on August the 2nd, 2005, that
22 you told the Army doctor the story about five men coming to
23 your room, that it was not a true story, and that the only
24 reason you gave that story was because you were under pressure
03:33 25 from the Army doctor? That's what that paragraph says, doesn't

03:33 1 it?

2 A. That's what it says. I've never seen this before.

3 Q. I know you've never seen it --

4 MR. KELLY: Actually, your Honor, it mischaracterizes
03:33 5 the document.

6 THE WITNESS: I have no idea what this is.

7 THE COURT: Just a second. Just a second.

8 MR. KELLY: It mischaracterizes the document. What
9 the document says is that some random agent, who's unknown to
03:33 10 any of us, made the statement to the person writing the
11 document. It doesn't say --

12 THE WITNESS: I've never said that in my life.

13 THE COURT: All right. I understand.

14 MR. KELLY: It's several layers down.

03:34 15 THE COURT: Okay. Well, the document has been
16 admitted without objection. I'm going to allow Mr. McKinney to
17 inquire about it. I will allow redirect from plaintiffs'
18 counsel for as long as necessary.

19 BY MR. McKINNEY:

03:34 20 Q. I understand you've never seen this document before. But
21 if we look carefully at what it says --

22 A. The person that was pressuring me was Jamie Armstrong, and
23 I never said that I lied about anything.

24 Q. Ms. Jones, let's just go through the document and I will
03:34 25 ask you some questions and Mr. Kelly will have a chance to ask

03:34

1 you some questions.

2 A. Okay.

3 Q. Fair enough?

4 A. Yes.

03:34

5 Q. What this Department of State person is reporting is that
6 it was you who told Dr. Schulz about five men coming to your
7 room. That's what this letter says, doesn't it?

8 A. That's inaccurate because even Pete Arroyo said I didn't
9 say that.

03:35

10 Q. Yes, ma'am. I didn't ask you whether it was accurate or
11 not. I'm asking you whether, in fact, the letter says that it
12 was you and not anyone else who told the Army doctor that five
13 men had come to your room.

14 A. That's what it says.

03:35

15 Q. They came to your room, they offered you a drink, they told
16 you there were no ruffies in it and -- and that's what -- that
17 is essentially what is in Dr. Schulz' history under Victim's
18 Description of Assailant [sic], is it not?

19 A. It's in there.

03:35

20 Q. Now, you understood after you were interviewed by the
21 Department of State that they were investigating your
22 allegations. You understood that, did you not?

23 A. I did.

24 Q. And the Department of State came to you several times; and,
03:36 25 in fact, you called them during the course of your

03:36 1 investigation to add information to their investigation,
2 correct?

3 A. Correct.

4 Q. And what this person is reporting is that prior to your
03:36 5 medevac -- that's slang for you being evacuated or being moved
6 out of the country, correct?

7 A. Yes.

8 Q. (Continuing) -- that you stated to a DS agent that you had
9 lied to the doctor because the doctor was pressuring you for a
03:36 10 story as to what happened. That's what this person wrote down?

11 A. He even says the doctor was a male.

12 Q. Understood.

13 A. This person did not talk to me.

14 Q. And I -- well, this person is reporting --

03:36 15 A. The doctor was clearly a female.

16 Q. Yes, ma'am. This person is reporting -- let's back up.

17 If, on the one hand, you, in fact, told
18 Dr. Schulz that five men came to your room and then when you
19 realized this matter was being investigated and you knew that
03:37 20 there were multiple witnesses to you being at this social
21 gathering and so you changed your story, if, in fact, that
22 happened --

23 A. That's not how it happened, Mr. McKinney.

24 Q. Yes, ma'am, I understand that's your --

03:37 25 MR. KELLY: Your Honor, he's arguing at this point,

03:37 1 your Honor.

2 MR. McKINNEY: Hypothetical question.

3 THE COURT: Okay. It's a very compound question.
4 Let's break it down.

03:37 5 MR. McKINNEY: I will try to.

6 BY MR. McKINNEY:

7 Q. The sequence of events that morning, Ms. Jones, depending
8 on how one interprets the documents that were written at the
9 time, the sequence of events has your initial statement to

03:38 10 Ms. Rumba in which she puts down "Patient states" and it's the
11 version of the story that has four men coming to your room and
12 coming inside, that's the first documented statement we have in
13 this case, correct?

14 A. Yes, but I didn't make that statement.

03:38 15 Q. Yes, I know that's your testimony.

16 And then the next documented statement we have is
17 the statement to the Army doctors that is substantively
18 identical to the statement to Ms. Rumba except the number of
19 firemen goes from four to five, correct?

03:38 20 A. That's what it said.

21 Q. And then after an investigation is launched and you are
22 asked to give a statement in regard to the investigation and
23 you realize that an investigation has been launched, it's
24 necessary for you to account for the fact that you were at a
03:39 25 social gathering and not in your room as was reported to

03:39 1 Ms. Rumba and to Dr. Schulz. Isn't that so?

2 A. No. And my report was to KBR people. It wasn't -- at that
3 time, I was told that there was no such investigation, that
4 federal officials weren't even involved. So, it wouldn't have
5 even -- even in your scenario, it wouldn't even be necessary.

03:39 6 Q. If we look again at Exhibit 69, isn't it obvious to you
7 that the State Department, from the very beginning, was
8 concerned about the inconsistency between the story that was
9 reported by Ms. Rumba and Dr. Schulz and the statement that you
10 gave to the State Department in which you told them that you
11 were at a social gathering? Isn't that obvious from this
12 letter?

13 A. That calls for me to speculate on what they thought.

14 Q. Isn't it obvious from this letter that the State Department
03:40 15 investigators came to you and asked you to explain why
16 Dr. Schulz has a version of the story that has five men coming
17 to your room, being allowed in, et cetera, and your statement
18 to the State Department in the official investigation being
19 different and referring to the social gathering that you
03:40 20 described in detail in your direct examination, isn't it clear
21 from this letter that that's exactly what is going on and you
22 are being confronted with the inconsistencies in your story?

23 A. No.

24 Q. And isn't it finally clear, Ms. Jones, in this letter that
03:41 25 for whatever reason, rightly or wrongly, the State Department

03:41 1 investigator wrote down that you explained the inconsistency by
2 saying that you lied to Dr. Schulz and that, in fact -- and the
3 reason why you lied was because the doctor forced you to give a
4 statement? Isn't that the sum and substance of this letter?

03:41 5 A. If this was true, it would have the DS' agents' names, it
6 would have the doctor's name, it would have the doctor that --
7 it wouldn't say "he"; it would have said "she." They would
8 have taken the time to write down everything, and they didn't.

9 I've never seen this, and that is not what I
03:41 10 said. And they may have assumed that I lied or something like
11 that but --

12 Q. Well, Ms. Jones, let me ask you this --

13 THE COURT: No. You go ahead and finish. Go ahead
14 and finish.

03:42 15 MR. McKINNEY: Go ahead.

16 THE COURT: They may have assumed you lied.

17 BY MR. McKINNEY:

18 Q. I'm sorry. Go ahead.

19 A. But, you know, that was just an assumption. Because if
03:42 20 this was something that they decided to take into
21 consideration, they definitely would have put the agent's name,
22 they would have put the doctor's name, they would have put that
23 she was a female. And also the fact that they were pressuring
24 me, I told them time and time again that Jamie Armstrong
03:42 25 coerced me into a statement. So, that could have been a

03:42 1 confusion. I was definitely coerced into that one.

2 Q. Well, let me ask you, Ms. Jones, did the State Department
3 investigators ever come to you and ask you to explain the
4 differences -- or why there was a difference between what
03:42 5 appeared in Dr. Schulz' records and what appeared in your
6 description of the events as given to the State Department?
7 Did anyone ever ask you about that?

8 A. Actually, Dr. -- not Dr.

9 Special Agent Lynn Falanga, she told me that she
03:43 10 saw the difference. And she also said that because they
11 believed that I had been drugged, that the first couple of
12 statements wouldn't even come into it because they believed
13 that those were maybe made while I was under Rohypnol.

14 Now, I know that Pete Arroyo was the one that
03:43 15 made the first statement that relayed it and relayed it. But
16 she had told me it wouldn't even have been submitted into
17 evidence because it was a non-issue.

18 MR. McKINNEY: May it please the Court, that really
19 was not the question.

03:43 20 THE COURT: Okay. What was the question again,
21 please?

22 MR. McKINNEY: Could the witness please be instructed
23 to answer as responsively as possible to the question?

24 THE COURT: Well, in most instances, I think she is.
03:43 25 She is under an oath to tell the whole truth, and I think she's

03:44 1 trying to do that.

2 But this will move faster if you listen carefully
3 to what Mr. McKinney says and respond to that. And Mr. Kelly,
4 on redirect, will bring out some more of the story. Okay?

03:44 5 THE WITNESS: No problem.

6 MR. MCKINNEY: Could I have the question read back for
7 the jury?

8 THE COURT: Yeah, I can do that.

9 The question was: Let me ask you, Ms. Jones, did
03:44 10 the State Department investigators ever come to you and ask you
11 to explain the differences or why there was a difference
12 between what appeared on Dr. Schulz' records and what appeared
13 in your description of the events as given to the State
14 Department? Did anyone ever ask you about that?

03:44 15 So, he's asking about inconsistency; and he's
16 further asking the more specific question: Did anyone ever ask
17 you about it?

18 BY MR. MCKINNEY:

19 Q. From the State Department.

03:44 20 A. What I remember is them pointing it out and stating that it
21 wouldn't come into evidence, that that was a problem in the
22 beginning and they pointed it out. And because of me being
23 under the influence in the morning, that that wouldn't have
24 been an issue.

03:44 25 Q. Would the bottom line then -- in connection with Bortz

03:45 1 Exhibit 69 that we've just reviewed at some length and some
2 detail here, would the bottom line be that whoever wrote this
3 is either making something up about you or talked to someone
4 who is making something up about you? Would that be the bottom
03:45 5 line?

6 A. That would be speculation. I don't know what happened.

7 Q. The description that you gave to Ms. Armstrong, you say
8 that was a coerced statement?

9 A. Yes.

03:46 10 Q. You did not want to write a statement?

11 A. No. I wanted to write a statement to authorities.

12 Q. All right. Is your statement to Ms. Rumba, nonetheless,
13 the truth?

14 A. Rumba?

03:46 15 Q. Sorry. To Ms. Armstrong, nonetheless, the truth?

16 A. Yes.

17 Q. Later that day, did you give a statement to the State
18 Department?

19 A. Yes. It wasn't a written statement; it was a verbal.

03:46 20 Q. Have you read it?

21 A. Yes.

22 Q. Does the State Department report of your statement -- or
23 does the State Department's account of your statement, is that
24 the truth?

03:47 25 A. There was a couple of things that they wrote down wrong;

03:47 1 but other than that, yes.

2 MR. McKINNEY: Your Honor, may I publish to the jury
3 the portion of the State Department report dealing directly
4 with their interview of Ms. Jones?

03:47 5 THE COURT: Tell me what pages we're talking about.

6 MR. McKINNEY: It would be -- in the final report, it
7 would be -- I believe it would be 0948.

8 MR. KELLY: What's the exhibit number?

9 MR. McKINNEY: Exhibit --

03:47 10 THE COURT: It's B98, but it's a portion of it.

11 MR. McKINNEY: Yes. There might be a better way to do
12 this, if I can have a half a second.

13 BY MR. McKINNEY:

14 Q. Let's look instead at B67.

03:48 15 THE COURT: 67 of B98?

16 MR. McKINNEY: No, Judge, Exhibit B67.

17 THE COURT: Exhibit B67. Are you going to hand her a
18 copy, or does she already have one?

19 Do you have one?

03:49 20 MR. McKINNEY: Do you need a copy, your Honor?

21 THE COURT: No, I don't. But does she have a copy?

22 MR. McKINNEY: It should be in the notebook there.

23 THE WITNESS: Are you putting it on the screen?

24 BY MR. McKINNEY:

03:49 25 Q. We will in just a second, but I need to lay the foundation

03:49 1 so I can move it for admission into evidence. So, if you
2 wouldn't mind looking at it.

3 A. What page?

4 Q. B67.

03:49 5 A. Okay. I'm there.

6 Q. Are you there? Okay.

7 And would you glance at the -- not the cover
8 page, but the following three pages and tell us whether or not
9 that is, in fact, the portion of the State Department
03:49 10 investigation pertaining to statements that you made?

11 A. Yes.

12 MR. MCKINNEY: I move for the admission of B67.

13 MS. VORPAHL: No objection, your Honor.

14 THE COURT: Any objection?

03:50 15 MR. KELLY: Your Honor, it's a three-page document. I
16 haven't had an opportunity to read every word of it. I don't
17 have any glaring objections right now other than I would like
18 an opportunity to read every word before I --

19 THE COURT: You've seen this document before?

03:50 20 MR. KELLY: I have seen it. I don't have any
21 objection that I'm aware of right now. There's a lot of
22 documents in this case, your Honor.

23 THE COURT: I know that. I know that. Well --

24 MR. KELLY: I don't have any problem with him
03:50 25 questioning off of it --

03:50

1 THE COURT: Okay.

2 MR. KELLY: -- as we go, if I could raise objection --

3 THE COURT: Let's proceed, and I'll --

4 MR. McKINNEY: I intend to publish it.

03:50

5 THE COURT: May we proceed by question for a moment
6 until --

7 MR. McKINNEY: Sure.

8 THE COURT: Okay.

9 BY MR. McKINNEY:

03:50

10 Q. I'll try to ask a couple of questions while your attorney
11 reviews the document, but you might want to look at it because
12 my questions come directly from the document.

13 A. Okay.

14 Q. Were you interviewed on the evening of July 28th, 2005, by
15 the State Department?

03:51

16 A. Yes.

17 Q. Specifically by T.J. Lunardi and Brian Nguyen -- sorry --
18 Heidi McMichael?

19 A. Yes.

03:51

20 Q. Did Mr. Lunardi begin the investigation by introducing
21 himself and asking if you were okay to answer questions?

22 A. Yes.

23 Q. And did you tell him that you were physically okay and
24 would speak with the investigators?

03:51

25 A. Apparently.

03:51 1 Q. Did Mr. -- did Mr. Lunardi inform you that the initial
2 interview would be short and that the regional medical officer,
3 Dr. Panakkal David, was standing by to provide counseling and
4 assistance?

03:52 5 A. Yes.

6 Q. Were you asked if you could recount the previous day's
7 activities beginning in the early morning?

8 A. Yes.

9 Q. And did you explain that you had only been in country for
03:52 10 approximately 48 hours and you were unfamiliar with the terrain
11 and layout of the embassy and Camp Hope and knew -- and only
12 knew a few individuals?

13 A. Apparently. I think the hours are wrong.

14 Q. Right. You actually had been about 72 or more hours?

03:52 15 A. 72 or more.

16 Q. Three and a half days or so?

17 A. Yes.

18 Q. Did you tell the investigating officers that you had had
19 dinner that evening with your coworker -- they have him down as
03:52 20 Khalin here, but I think it was Khalid, K-H-A-L-I-D?

21 A. He pronounces it "Khalid," though.

22 Q. "Khalid"?

23 A. Yeah.

24 Q. All right. Anyway, you told the investigating officers
03:53 25 that you -- or the investigating agent that you had had dinner

03:53 1 with Khalid?

2 A. Yes.

3 Q. Gone to play the guitar with him?

4 A. Yes.

03:53 5 Q. And did you tell the investigating agent that you had
6 sipped on a glass of whiskey while you were playing a guitar?

7 A. I swigged on -- I took one swig out of a bottle.

8 Q. All right. Okay. It kind of gets jumbled up in here a
9 little bit, and a lot of this is probably unnecessary

03:53 10 background information.

11 But the general sequence of events that evening,
12 you played the guitar with Khalid, and then you went back to
13 your room. I believe you told us that you were in your room
14 and either you called Pete Arroyo or Pete Arroyo called you.

03:54 15 Is that correct?

16 A. Yes.

17 Q. Now, prior to this time, you had met Charles Bortz, been
18 introduced to him, correct?

19 A. Yes.

03:54 20 Q. And then you had met him in passing in your barracks?

21 A. Yes.

22 Q. And at some point before this evening, Mr. Bortz' phone
23 number had been loaded into your cell phone?

24 A. Yes, by Sara Simco.

03:54 25 Q. Was that at your request that Ms. Simco load that

03:54 1 information?

2 A. Yeah. I had her put a bunch of different numbers in there;
3 but I didn't specifically say for Charles Bortz, but just
4 people around the barracks, so I would know how to get to
03:54 5 different places. I'm really bad with directions.

6 Q. All right. So, in any event, to move on, you were outside
7 on the phone with Mr. Arroyo and Ms. Simco and Mr. Bortz came
8 up to you and invited you to join their gathering?

9 A. Right.

03:55 10 Q. And you did?

11 A. Yes.

12 Q. Because it's a good chance to meet people and make new
13 friends and you were going to be there for a year?

14 A. Right.

03:55 15 Q. Did you know at this point that Mr. Bortz was dating a
16 woman named Beneta Brumatti?

17 A. No.

18 Q. You had earlier that day been informed by Ms. Simco of some
19 kind of secret regarding her boyfriend. You told us about that
03:55 20 in connection with Mr. Kelly's examination?

21 A. Yes.

22 MR. MCKINNEY: May it be published?

23 MR. KELLY: No objection.

24 THE COURT: Okay. Exhibit B67, admitted without
03:56 25 objection.

03:56

1 MR. McKINNEY: Is this 0048?

2 MR. KELLY: Yes.

3 BY MR. McKINNEY:

03:56

4 Q. All right. Let's go under Item 5, please. And in the
5 middle --6 MR. McKINNEY: I'll try to do it this way. Right here
7 where it says, "RA questioned Jones about Bortz," let's get
8 down to that sentence; and then we'll just go sentence by
9 sentence.

03:57

10 BY MR. McKINNEY:

11 Q. The agent questioned you about Charles Bortz; and you told
12 the agent that you had met him the previous night and had been
13 introduced by Sara Simco, correct?

14 A. Correct.

03:57

15 Q. Is that right?

16 A. Yes.

17 Q. And that actually happened?

18 A. Yeah.

19 Q. That's what you told the agent?

03:57

20 A. Yeah.

21 Q. Yes. Okay. You told the agent that you -- or did you tell
22 the agent that you knew that Charles Bortz was a firefighter
23 and that he had several roommates but you were unsure of their
24 names? Did you tell the agent that?

03:57

25 A. Yes.

03:57

1 Q. Now, let me stop right there. I think you told our jury
2 that when you had woken up that morning and you saw Mr. Bortz
3 in your room, you did not know his name?

4 A. His first name.

03:58

5 Q. His first name?

6 A. Yes.

7 Q. All right. Continuing now with what the agents wrote down
8 from your interview, did you -- you agreed, I suppose -- we
9 talked about that -- you agreed to join the group but first you

03:58

10 went to your room and poured a glass of Baileys or a cup of
11 Baileys, correct?

12 A. Right.

13 Q. And I think you actually remember even today that it was a
14 third of an 8-ounce cup?

03:58

15 A. Because it was like a shot, little bit more than a shot.

16 Q. But a relatively small amount of alcohol?

17 A. Right.

18 Q. And so, when you arrived at the party, according to this,
19 you told the agent that you saw Mr. Bortz, you saw Sara Simco,
20 a young woman named Melissa, Jimmy, and Bortz' two roommates?

03:59

21 A. You can tell I'm bad with names from that because --

22 Q. I'm bad with names, too. But looks like there were about
23 six people or seven people there when you arrived?

24 A. Right. Because I think Jimmy was actually somebody else's
25 name.

03:59

03:59

1 Do you remember who that was?

04:00

2 Q. And then later in the evening, Mr. Castillo and Matt Ryan
3 and Tyler Schmidt, and I believe Mr. Castillo's girlfriend
4 showed up at the gathering, correct, off and on over the
5 evening?

6 A. Yes.

7 Q. So, we're now up to about 10 or 11 people who were there
8 with you and Mr. Bortz at one time or another because you were
9 actually able to remember them being there with you?

04:00

10 A. Okay.

11 Q. Do you agree with that?

12 A. Yeah.

13 Q. We drop on down to the last line: "Jones recalled everyone
14 sitting around drinking and talking." You were sitting beside
15 Bortz and shared an unknown cocktail with him. Did you tell
16 the agents that?

04:00

17 A. I shared the Baileys with Bortz.

18 Q. Well, let me just -- what the agent has written down here,
19 based on his interview of you, is that you were sitting next to
20 Charles Bortz and sharing an unknown cocktail with him.

04:01

21 You had already told the agent about the Baileys,
22 correct?

23 A. Right.

24 Q. And apparently, what the agent wrote down is that it looks
25 like you were sharing a different drink, an unknown drink, at

04:01

04:01

1 that point?

2 A. I don't recall that today. That's all.

3 Q. And then it goes on to state -- and is this something that
4 you told the agent -- that you also recalled sipping some of
04:01 5 Castillo's cocktail?

6 A. (No response).

7 Q. That is, you were sipping out of Mr. Bortz' drink, and you
8 also sipped some out of Mr. Castillo's drink. Do you recall
9 telling the agent those things?

04:01

10 A. I don't recall that today. But I wouldn't have lied to the
11 agent either. So --12 Q. Would you defer to what the agent has written down here
13 compared to your memory today, generally speaking?

14 A. Generally.

04:02

15 Q. Okay. Then the next sentence refers to the comment you
16 made about Ms. Simco's boyfriend in front of the crowd?

17 A. (No response).

18 Q. Do you see that at the bottom of the page?

19 A. Yes.

04:02

20 Q. This was a mistake, and Ms. Simco was upset and left. And
21 you told us that you went to apologize. And that's recounted
22 here in the agent's statement, correct?

23 A. Yes.

24 Q. If we drop down to the last sentence -- last two sentences
04:02 25 of -- we're on the next page now. These -- beginning right

04:02 1 about here. Well, let's just leave it like that.

2 Right here, Ms. Jones, it begins that you -- that
3 you reported that you stayed at Ms. Simco's for a few minutes,
4 and then you returned to the party. Do you recall returning to
04:03 5 the party directly after going to see Ms. Simco?

6 A. No. I went up to my room first.

7 Q. All right. What it says here is that you returned to the
8 party, and you stated that you told them that you were
9 returning to your room and said goodnight to the individuals
04:03 10 there. Do you see that?

11 A. They weren't typing when they were talking to me. Now, I
12 clearly remember this, that I went from Simco's room to my
13 room.

14 Q. Okay.

04:03 15 A. And then I returned later, after confirming that people
16 were still gathering outside.

17 Q. Now, here in Item 6 --

18 MR. McKINNEY: If you can highlight that for us,
19 please.

04:04 20 BY MR. McKINNEY:

21 Q. -- did you tell the investigators that day on July the 28th
22 that after you returned to your room, Charles Bortz called you
23 on your cell phone?

24 A. I believe I called him to see if the party was still going
04:04 25 on.

04:04 1 Q. Yes, ma'am. But it says just the opposite here.

2 A. It does.

3 Q. It says that you told the agents that Charles Bortz called
4 you. Is that what you told to the agents?

04:04 5 A. I don't think so.

6 Q. Pardon me?

7 A. I don't think so. Because I called him.

8 Q. You think they got it wrong?

9 A. Yeah.

04:04 10 Q. All right. Have you looked, by the way, at your cell phone
11 records that document the call to you from -- from you to
12 Charles Bortz?

13 A. I tried to look at those. They don't make any kind of
14 sense to me.

04:05 15 Q. All right.

16 A. Why is it I called him or he called me?

17 Q. Well, you called him --

18 A. Okay.

19 Q. -- according to the records, but there apparently was also
04:05 20 a five-minute phone conversation.

21 Do you find it surprising that you would have
22 called Charles Bortz, whose first name you did not know, and
23 chatted with him for five minutes from your barracks room?

24 A. Not necessarily at this time. Because I was calling to see
04:05 25 if they were still hanging out, and I remember him saying that

04:05 1 they wanted me to go back down and hang out. And nothing
2 alarming really had happened at this point.

3 Q. Okay. Now, Item 7 is a notation that was made by the agent
4 also?

04:06 5 A. Okay.

6 Q. And it begins: "Upon returning to the party, Jones
7 recalled Bortz' roommate asking her if she wanted a cocktail.
8 Jones stated that she told him yes. And that he returned a few
9 minutes later with several cocktails."

04:06 10 A. Also is --

11 Q. If you could wait --

12 A. Okay.

13 Q. -- I'm going to ask you a question.

14 A. No problem. Sorry, Mr. McKinney.

04:06 15 Q. It's okay.

16 Focusing on the words that the agent wrote down,
17 based upon his conversation with you, he begins with the phrase
18 "upon returning to the party." Do you see that?

19 A. Yes.

04:07 20 Q. That would imply, would it not, that pretty much the first
21 thing that happened when you got to the party was that Matt
22 Ryan offered you a drink, would it not?

23 A. Right.

24 Q. And it would also -- and is that what happened; as soon as
04:07 25 you got back to the party, that Matt Ryan offered you a drink?

04:07 1 A. Yeah. And it took a long time for him to come back with
2 the drinks.

3 Q. Okay.

4 A. And also the verbiage "cocktails." That wouldn't be
04:07 5 something that I would use at 20 years old.

6 Q. Well, all right. But in any event, the agent goes on to
7 note in the next sentence that you said yes, and that he,
8 Ryan -- presumably Ryan -- returned a few minutes later with
9 several cocktails.

04:08 10 And that would imply, would it not, that at the
11 time you were being interviewed by the agent, that you told the
12 agent that within a few minutes of your getting back to the
13 party, you had, in fact, received the cocktail from Matt Ryan?
14 A. Took a few minutes.

04:08 15 Q. Well, a few is less than five normally, isn't it?

16 A. No, not necessarily so.

17 Q. Okay. In any event, Mr. Ryan only made you one cocktail
18 that evening, did he not?

19 A. Right.

04:08 20 Q. And that's the cocktail that you've told us that you took
21 two sips from and you remember nothing else?

22 A. Two sips that I remember, right.

23 Q. That you remember. And your mind goes blank after that?

24 A. Correct.

04:08 25 Q. Now, so far, Ms. Jones, what we've seen in the statement --

04:09 1 or in the report of your interview is that the agent has been
2 going sequentially or chronologically, one thing leading to
3 another?

4 A. It's not chronological. Because I was jumping around. I
04:09 5 was talking about the night, and then I would forget something.
6 "Oh, yeah, this happened. Oh, yeah, this happened."

7 Q. And I understand that you would jump around. But the agent
8 is putting your statement in chronological order, as you can
9 see?

04:09 10 A. I don't agree with that.

11 Q. Can you see that?

12 You don't agree with that? Okay.

13 A. No. Because I read this before. And I was jumping around
14 pretty badly because I had just been raped. And for me to
04:09 15 gather my thoughts well enough to put it in sequential order
16 wasn't going to happen.

17 Q. Okay. Continuing, you told the agent -- or did you tell
18 the agent that you were unsure if Bortz received a cocktail at
19 the same time?

04:10 20 A. I remember that.

21 Q. Now, do you recall how many drinks Mr. Ryan brought back?

22 A. No.

23 Q. Well, it was at least -- it was more than one, was it not?

24 A. It was more than one.

04:10 25 Q. He brought back drinks for a number of people?

04:10 1 A. He has two hands.

2 Q. Right.

3 A. So, I don't know how many he brought back.

4 Q. And I was going to ask you, how was he carrying them? Did

04:10 5 he have a tray? Was he holding them like between his fingers

6 like sometimes people will do? Holding them by the lids?

7 A. I don't remember.

8 Q. You just don't have a recollection?

9 A. No.

04:10 10 Q. All right. And when he got to -- were you-all at the

11 picnic table at this point?

12 A. I think I was still sitting on the curb.

13 Q. All right. Did he put the drink down on the picnic table

14 and then hand them out? Do you remember --

04:10 15 A. No.

16 Q. -- one way or another?

17 A. I specifically remember him grabbing a drink and saying,

18 "Don't worry. Saved all my ruffies for Dubai."

19 Q. Right, right.

04:11 20 See, what I'm trying to find out here, just in

21 case it ever becomes important, is he brings back several

22 drinks, and he distributes these drinks to various people?

23 A. Okay.

24 Q. All right?

04:11 25 A. Uh-huh.

04:11

1 Q. "Yes"?

2 A. Yes.

3 Q. Thank you.

4 And so they're all in red or blue cups, are they
04:11 5 not?

6 A. Don't remember.

7 Q. Some kind of plastic cup of the type normally used at
8 parties like this?

9 A. Right.

04:11

10 Q. And so, do you recall who he gave drinks to first, who he
11 gave drinks to second? Were you the last person to get a
12 drink? The first person? Were you in the middle?

13 Again, just in case it becomes important later
14 on.

04:11

15 A. No. I don't think I was paying attention.

16 Q. Okay. And it was at this point in time when he got back
17 and he handed you the drink that he made the comment about not
18 having put a roofie in your drink, that he was saving the
19 ruffies for Dubai, correct?

04:12

20 A. Yes.

21 Q. And then we see the final sentence in Item Number 7 where
22 it states: "Jones recalled also sipping on Bortz' drink
23 throughout the night."

24 Do you see that?

04:12

25 A. Yes.

04:12 1 Q. Which -- and do you agree with me that that statement
2 implies that on July the 28th, you had a memory of other events
3 happening after Mr. Ryan gave you the drink? Isn't that the
4 fair import of this statement that the agent has written down?

04:13 5 A. No.

6 Q. Okay. Item Number 8 --

7 A. Okay.

8 MR. McKINNEY: If we can highlight that.

9 BY MR. McKINNEY:

04:13 10 Q. Did you tell the agent that approximately 10 to 30 minutes
11 after returning to the party -- that is, after your return to
12 the party -- that Bortz' friend, who you later learned was Greg
13 Soriano, and his girlfriend, a Hispanic female, arrived at the
14 party; did you make that statement to the agent?

04:14 15 A. Yes.

16 Q. And did you tell the agent that the time frame was 10 to 30
17 minutes?

18 A. I don't know.

19 Q. If the agent wrote down that you said 10 to 30 minutes, are
04:14 20 you in a position to disagree with that?

21 A. All I know is, once I took a couple of sips out of that
22 drink, I don't have any memory other than recalling Soriano
23 leaving as I'm taking the sips. So I don't know if it took me
24 awhile to take a couple of drinks out of that drink or what.

04:14 25 Q. Well, but again, Ms. Jones, with respect, that was not the

04:14 1 question.

2 I'm simply asking you if it appears here in this
3 report that you said Mr. Soriano showed up 10 to 30 minutes
4 after you came back to the party?

04:14 5 A. That's what it says. And again, I'm really bad with time
6 frames. And I always have been.

7 Q. We're trying to figure out what happened that night,
8 Ms. Jones. And you understood that the investigator was
9 gathering evidence from you in connection with an official
04:15 10 investigation?

11 A. Yes.

12 Q. And you didn't have any reason not to be completely honest
13 with him at the time, did you?

14 A. No.

04:15 15 Q. And you had every reason to be as forthcoming and give as
16 much information as you were aware of to aid in the
17 investigation?

18 A. And I tried. But I was really crying a lot, and frantic
19 and everything else. So --

04:15 20 Q. Okay. The report goes on to say that you didn't recall
21 Mr. Soriano and his girlfriend having anything to drink and
22 that they only stayed for a short period. And then the agent
23 asked you about the subject of the conversation at that party.
24 Do you recall that?

04:16 25 A. Yes.

04:16 1 Q. Okay. And you told the agent that you recalled the
2 conversation being typical work-related matters. That's fairly
3 normal, isn't it?

4 A. Uh-huh, yes.

04:16 5 Q. And then the agent noted that you and Bortz talked about
6 one of his roommates liking you. Did Mr. Bortz tell you that
7 one of his roommates liked you, thought you were cute,
8 something like that?

9 A. Yeah, it was the guy that gave me the drink. Wasn't that
04:16 10 his roommate?

11 I'm sorry, I'm not supposed to ask you questions.

12 Q. I don't think it's the roommate, but I could be wrong.

13 And it also says that you told the agent that you
14 and Mr. Bortz discussed ways in which Mr. Bortz could break up
04:17 15 with his girlfriend. And that's how the agent phrased it?

16 A. Yes.

17 Q. That you and Charles had a conversation about how he could
18 go about breaking up with Beneta Brumatti. Did you and
19 Mr. Bortz, in fact, have a conversation in which the two of you
04:17 20 discussed how Charles could break up with Beneta?

21 A. We talked about him wanting to break up with her, all the
22 reasons why he was breaking up with her, things like that.

23 Q. And all of this happened after you returned to the party?

24 A. Yes.

04:17 25 Q. And after you had been given the drink by Matthew Ryan?

04:17

1 A. But before I took those sips, for sure.

2 Q. But apparently before you drank anything out of it?

3 A. Yeah.

4 Q. Okay. You also told the agent that, at the time, you

04:18

5 couldn't remember the name of Mr. Bortz' girlfriend but you
6 were aware that she was on leave and that she worked in the
7 same IT section that you would be working in?

8 A. Yep.

9 Q. So, you actually -- before you -- before whatever happened,

04:18

10 happened that night, you knew that Charles was thinking about
11 breaking up with Beneta, and you knew that you and Beneta would
12 be working in the same office when she returned from her
13 vacation.

14 A. Looks like it, yeah.

04:19

15 Q. And here we get to Item Number 9.

16 MR. McKINNEY: Let's highlight the first two
17 sentences. There we go, first three lines.

18 BY MR. McKINNEY:

19 Q. According to the agent, what you said back on July the 28th

04:19

20 was that one of Mr. Bortz' roommates -- who at the time you
21 didn't know his name apparently, but it was Tyler Schmidt --
22 left the party to return to his room, and the agent goes on to
23 say that you said that shortly after seeing Schmidt depart,
24 your memory ceases. That's what he wrote down, correct?

04:20

25 A. Uh-huh, yes.

04:20

1 Q. Okay.

2 A. Sorry.

3 Q. Now, you had been at the party for how long between the
4 time that you first arrived and got the drink from Matthew Ryan
04:20 5 until the time that Tyler Schmidt left and your memory ceased?

6 Do you know how long you'd been there?

7 A. No clue.

8 Q. Half hour, hour?

9 A. No idea.

04:20

10 Q. No idea. All right.

11 As we progress through Section 9, we're now at
12 the point where you've woken up the next morning?

13 A. Yes.

14 Q. Do you see that?

04:21

15 A. Can we use the bathroom pretty soon?

16 THE COURT: We'll take a break. How late does the
17 jury want to work tonight?

18 5:00? Okay, 5:00 o'clock. Okay. Short break,
19 10-minute break.

04:21

20 THE WITNESS: Okay. Thanks.

21 *(Recess was taken from 4:21 to 4:31 p.m.)*22 *(Jury not present)*

23 THE COURT: Just one second.

24 You may resume your seat, Ms. Jones.

04:31

25 My office received a call from Dr. Meisner saying

0 4 : 3 1 1 he didn't realize he would be called as early as Wednesday and
2 asked for me to call him back. I really don't want to call
3 him.

4 MR. ESTEFAN: Is it Dr. Meisner or Dr. Scarano?

0 4 : 3 1 5 MR. HEDGES: Meisner is my witness.

6 MR. McKINNEY: Scarano? You mean Scarano, your Honor?

7 MR. HEDGES: Meisner is my witness. I haven't told
8 him anything about showing up.

9 THE COURT: We'll check. The person who talked to him
0 4 : 3 1 10 said Meisner.

11 MR. HEDGES: I haven't notified him that he's being
12 called to testify.

13 THE COURT: Could you touch base with him?

14 MR. HEDGES: Oh, yes, I will. But I haven't --

0 4 : 3 2 15 THE COURT: I'm not accusing you.

16 MR. McKINNEY: Certainly wasn't me.

17 MR. KELLY: Unless we had SNAFU, we didn't --

18 MR. HEDGES: Did it make sense what he said?

19 THE COURT: He was surprised he was being called so
0 4 : 3 2 20 soon and could I call him.

21 MR. HEDGES: This Wednesday, did he think?

22 THE COURT: This is hearsay upon hearsay.

23 MR. KELLY: It's not admissible, then, Judge.

24 MR. HEDGES: It's not even part of our case, then.

0 4 : 3 2 25 MR. ESTEFAN: It would be our case in chief, and we

04:32 1 did not contact him.

2 THE COURT: Well, could you call him, please, and
3 resolve the confusion.

4 Would all please rise for the jury?

04:32 5 (*Jury present*)

6 THE COURT: Members of the jury, please be seated.

7 All right. You may resume your inquiry.

8 BY MR. McKINNEY:

9 Q. Ms. Jones, I am not going to -- unless you want to go into
04:33 10 it, I'm not going to ask you about the initial period when you
11 woke up. We may have to discuss it at some point, but I'm not
12 going to ask you about that right now.

13 What I would like to do is I would like to -- and
14 under Tab Number 9, skip down to the part where it says --
04:33 15 right here: "Jones explained that she could not recall any
16 further conversations." Do you see that?

17 MR. McKINNEY: Let's just highlight the rest of that
18 paragraph.

19 BY MR. McKINNEY:

04:34 20 Q. What we see here in this sentence --

21 MR. McKINNEY: If we can get it highlighted. There we
22 go.

23 BY MR. McKINNEY:

24 Q. The first highlighted sentence says: "Jones explained that
04:34 25 she could not recall any conversations that took place as they

04:34 1 were departing -- as they were departing her room." Which
2 would imply that you and Mr. Bortz left your room together that
3 morning. Do you remember that?

4 A. I've always said that I can't recall what happened to the
04:34 5 man in my room. So --

6 Q. All right. Well, let me direct your attention back to --

7 A. But that doesn't mean I didn't remember back then.

8 Q. -- back to the statement that you gave to Ms. Armstrong.

9 MR. McKINNEY: If we could put the second page of
04:35 10 Joint Exhibit 103 on the board. And I would like to highlight
11 the sentence that says -- make sure I don't blind anybody --
12 "He walked me outside for work." Which is two -- five lines --
13 right there.

14 BY MR. McKINNEY:

04:35 15 Q. Now, that sentence that we see right there, the "he"
16 referring, of course, to Charles Bortz --

17 A. Uh-huh.

18 Q. -- is a sentence written in your own handwriting, correct?

19 A. Yes.

04:35 20 Q. And it's written sometime on July the 28th, the day of all
21 these events, correct?

22 A. Uh-huh.

23 Q. "Yes"? You have to -- for the court reporter, please.

24 A. Yes. I'm sorry. I forget.

04:36 25 THE WITNESS: Can you-all hear me?

04:36 1 BY MR. McKINNEY:

2 Q. And what you indicate here is that Mr. Bortz walked you
3 outside for work, do you not?

4 A. I do.

04:36 5 Q. And I was just wondering if that didn't dovetail in with
6 the statement that we see here on --

7 MR. McKINNEY: If we could go back to B67 --

8 A. I'm not taking an issue with it. I don't remember now, but
9 this was years ago.

04:36 10 BY MR. McKINNEY:

11 Q. All right.

12 A. Does that make sense?

13 Q. And I simply want to ask you this question. And I'm sure
14 you don't agree with it. But does it not seem odd to you that
04:36 15 a man who has, according to you, raped you would spend the
16 night, and then stick around and walk you outside for your job
17 for work?

18 A. He walked me outside.

19 Q. Isn't that somewhat unusual behavior for a rapist?

04:37 20 A. No. He knew he was outside of jurisdiction. He knew he
21 was outside of this civil court system until I got involved.
22 So, no. He was brazen enough to still be there.

23 Q. All right. So, you know what was in Mr. Bortz' mind and
24 you know why he spent the night in your room and why he walked
04:37 25 you outside, and that's what you're telling our jury?

04:37 1 A. I'm telling you why -- you asked me why -- you asked me a;
2 question; and I answered it, Mr. Kelly.

3 THE COURT: Mr. McKinney.

4 A. I mean -- I'm so sorry. Mr. McKinney.

04:37 5 THE COURT: No, that's all right.

6 THE WITNESS: I'm getting tired now.

7 THE COURT: We're almost done for the day.

8 THE WITNESS: All right.

9 BY MR. McKINNEY:

04:37 10 Q. Picking up with your statement, it says you were picked up
11 for work by Mr. Arroyo and he took you to work and you weren't
12 sure whether you called him or whether it was a chance meeting.
13 That part is -- you agree with that?

14 A. Yes.

04:38 15 Q. And then the agent goes on to note that you told the agent
16 that you felt sick at work and decided to leave. "Jones stated
17 that afternoon she decided to seek medical assistance at the
18 Military Combat Surgical Hospital."

19 There's a lot more to it than that, isn't there?

04:38 20 A. To what?

21 Q. You feeling sick and deciding to leave work and that you
22 decided to seek medical assistance at the Military Combat
23 Surgical Hospital?

24 A. Well, the whole report is what it's about.

04:39 25 Q. Let's go to Page 10, and then we'll be through with this --

04:39 1 or let's go to the next page and look at Item Number 10.

2 A. Okay.

3 Q. "RA questioned Jones about the events that morning while
4 she was at work. Jones informed RA that she recalled it being
04:39 5 a typical day at work. Jones recalled contacting Arroyo that
6 morning but couldn't recall any other significant e-mail or
7 telephone calls."

8 Do you see that?

9 A. Yes.

04:39 10 Q. Now, you're aware that your cell phone records show that
11 you called Charles Bortz that morning at 7:21, are you not?

12 A. Yeah, I think I butt-dialed him.

13 Q. For a two-minute phone call?

14 A. Absolutely. I did not talk to him.

04:39 15 Q. Okay.

16 A. Because he was the last person I talked to the previous
17 night about seeing if the gathering was still together; so, his
18 number would still be the last number called.

19 THE COURT: And you dialed it mistakenly?

04:40 20 THE WITNESS: Yeah, I did.

21 BY MR. McKINNEY:

22 Q. Well, with all due respect, Ms. Jones --

23 MR. McKINNEY: If we could put up Joint Exhibit 133.
24 And highlight, please, beginning right -- I believe --
04:40 25 actually, no. It's this right here, this section right here

0 4 : 4 1 1 (indicating).

2 No. Just the -- that's more information than we
3 need. Just, please, from right here to right here
4 (indicating), if you would cut that out and highlight it for
0 4 : 4 1 5 me.

6 Enlarge it, if possible.

7 Thank you.

8 BY MR. McKINNEY:

9 Q. Other evidence in this case will show, Ms. Jones, that the
0 4 : 4 1 10 number we see here, the first number in this section, this is a
11 number called, (790)266-9206, that's Charles Bortz' number?

12 A. Oh, okay.

13 THE COURT: I want to make sure everybody understands
14 what Ms. Jones has said. She said that she butt-dialed him,
0 4 : 4 2 15 which in her deposition we clarified as meaning she perhaps sat
16 on her phone and accidentally dialed that number. Does
17 everybody -- okay.

18 BY MR. McKINNEY:

19 Q. And you told the jury just a moment ago that the reason why
0 4 : 4 2 20 you believe you accidentally called Mr. Jones' -- Mr. Bortz'
21 number is because that was the last number you had called the
22 night before?

23 A. That's what I thought, but --

24 Q. And as we can see --

0 4 : 4 2 25 A. That's how I remember it.

04:42

1 Q. -- you made several phone calls to two different numbers
2 that morning: one at 6:38, one at 6:41, and one at 6:45?

3 A. Okay.

04:42

4 Q. And then you can see, after having made those three phone
5 calls, you called Charles Bortz' number, and the call lasted
6 two minutes. Do you see that?

7 A. I didn't talk to him. So it must have been an accident
8 dial. Something happened, but it was a two-minute phone call.

9 Q. We do have a record, do we not --

04:43

10 A. Yeah, you do.

11 Q. -- of a call to Mr. Bortz' number, and a two-minute phone
12 call, with three intervening phone calls?

13 A. Right, you do.

14 Q. Now, let's forge ahead and get you at the office. Okay?

04:43

15 You've gone to work.

16 A. Okay.

17 Q. And there you are at your desk.

18 A. Okay.

19 Q. Okay?

04:43

20 MR. McKINNEY: At this time, I move for the admission
21 of Joint Exhibit Number 56.

22 MR. KELLY: No objection, your Honor.

23 MR. McKINNEY: I'll also offer 57, which is the
24 second --

04:44

25 MR. KELLY: Also no objection, your Honor.

04:44

1 THE COURT: Admitted without objection.

2 MR. McKINNEY: Can we have Exhibit 56 put up, please?
3 Go to the last page, please, which is the beginning of the
4 e-mail string.

04:44

5 We must be talking about different exhibits.

6 Joint Exhibit 56? Oh, there we go. Okay.

7 BY MR. McKINNEY:

8 Q. At 7:19 --

04:45

9 MR. McKINNEY: No. Actually, that's from the day
10 before. The first e-mail is right here.

11 If you'll blow that up.

12 BY MR. McKINNEY:

13 Q. As you can see, Ms. Jones, at 7:19 a.m. you sent an e-mail
14 to Pete Arroyo that says: "Thanks so much for taking me to
15 work this morning."

04:45

16 A. Uh-huh.

17 Q. Do you see that?

18 A. I do.

19 Q. Do you remember sending that e-mail?

04:45

20 A. I was still under the influence, so not really.

21 Q. Well, do you remember a little bit or you have no memory of
22 it? Where are we on that?

23 A. I don't really remember it.

24 Q. Okay. And then if we scroll up to see Mr. Arroyo's reply
25 up here, we'll see that at 7:36, about 15 minutes later,

04:45

04:46 1 Mr. Arroyo writes back and says: "Not a problem. Just promise
2 you won't get caught up in camp gossip." Do you see that?

3 A. Uh-huh.

4 Q. Can you say "yes" or "no," please, ma'am --

04:46 5 A. Yes. I'm so sorry.

6 Q. -- for the court reporter? Thank you.

7 Now, did you tell Pete Arroyo on the way to work
8 that morning that you and Charles had talked the night before,
9 and Charles had told you that he was going to break up with
04:46 10 Beneta because he was interested in you? Did you tell Pete
11 Arroyo that on the way to work?

12 A. I don't know what I said on the way to work. I don't even
13 remember any of this.

14 But you're going to flip to an e-mail that will
04:47 15 say that.

16 Q. Okay.

17 THE COURT: You just have no memory at all of the
18 trip?

19 THE WITNESS: I remember -- if we show all the
04:47 20 e-mails, I remember like the last couple, but not really. I
21 don't really remember that trip in the morning.

22 THE COURT: All right.

23 BY MR. McKINNEY:

24 Q. All right.

04:47 25 A. Unfortunately.

0 4 : 4 7 1 Q. Well, let's look at your response. Your response is here
2 at the top.
3 A. Okay.
4 Q. And your response is: "Oh, I'm sure I already am."
0 4 : 4 7 5 A. Yes.
6 Q. Do you see that?
7 A. Yes, I do.
8 Q. Do you remember writing that response?
9 A. No.
0 4 : 4 7 10 Q. No recollection whatsoever?
11 A. No.
12 Q. All right. Well, as you sit here today, can you think of a
13 reason why you would get caught up in camp gossip --
14 A. Yeah.
0 4 : 4 7 15 Q. -- your third day in Iraq?
16 A. Yes.
17 Q. And what would that reason be?
18 A. Well, I had made Sara Simco upset with me for disclosing
19 that she had a boyfriend on accident.
0 4 : 4 8 20 Q. Okay. What else would get you caught up in camp gossip?
21 A. Well, that definitely would.
22 Q. All right. Is that it?
23 A. I was raped.
24 Q. Well, if you weren't raped, if just hypothetically you had
0 4 : 4 8 25 consensual sex with a fellow worker's boyfriend, would that be

04:48 1 likely to get you caught up in camp gossip? Don't you think?

2 A. It would. But this wasn't consensual.

3 Q. We turn the page. And I will go to my grave not

4 understanding this response, but Mr. Arroyo wrote back to you

04:49 5 after you said that you were sure you were already caught up in

6 camp gossip and said: "Good deal."

7 Do you have any idea what he meant by that?

8 Seems like an odd response, does it not?

9 A. It does.

04:49 10 Q. But then you replied right up here at 7:43 in the morning

11 and you stated: "The girls hate me here." Do you see that?

12 A. I do.

13 Q. Is there any doubt in your mind that you wrote that e-mail?

14 A. No.

04:49 15 Q. Do you remember it today?

16 A. I don't remember it.

17 Q. You don't remember writing that e-mail, but you know you
18 wrote it?

19 A. Pretty sure I probably did.

04:50 20 Q. Do you have any idea what you meant by that e-mail?

21 A. Because of Sara Simco.

22 Q. Now, I thought you told us in response to Mr. Kelly's

23 questions, I believe it was Thursday, that you went to

24 Ms. Simco's hooch, and she told you she really wasn't mad and

04:50 25 it wasn't any big deal and not to worry about it.

04:50

1 A. Right.

2 Q. Okay. Now --

3 A. But she really was still mad. I could tell by her
4 demeanor, the way she was carrying herself, and now her
04:50 5 deposition, that she really was mad.

6 Q. Well, since -- since you -- since that evening in Iraq, one
7 thing that's happened is you've accused Sara Simco's good
8 friend, Charles Bortz, of raping her -- of raping you, correct?

9 A. He did.

04:50

10 Q. Well --

11 THE COURT: Okay. All right.

12 BY MR. MCKINNEY:

13 Q. That would be a reason for Ms. Simco to be unhappy with
14 you, would it not, accusing her friend, Charles Bortz, of
04:51 15 raping you?

16 A. She was unhappy with me then; she's unhappy with me now.

17 Q. All right. And so you think here this is not a reference
18 to you coming between Charles and his girlfriend; you think
19 this is a reference to telling that social gathering that Sara
04:51 20 Simco had a boyfriend?

21 A. Yes. I didn't even know Charles Bortz' girlfriend.

22 Q. Well, you knew that Charles Bortz had a girlfriend?

23 A. Yes.

24 Q. You knew that she worked in your department?

04:51

25 A. Yes.

0 4 : 5 1 1 Q. And you knew that he was going to break up with her,
2 because you told the State Department agents that you discussed
3 that at the social gathering?

4 A. Right.

0 4 : 5 2 5 Q. Let's go to the next page. We see Pete Arroyo's response
6 to your statement that "the girls hate me here." What
7 Mr. Arroyo said to you at 7:52 a.m., he states: "Because you
8 are a threat to their attention they get from the guys. Don't
9 worry. When they see you are a real person, they will warm up
0 4 : 5 2 10 to you. However, just be prepared to deal with Beneta when her
11 boyfriend breaks up with her and begins his slow descent into
12 the 'oh, shit, I shouldn't have broken up with my girlfriend'
13 mode." Jamie, just be yourself and everything will be fine."

14 Your response two minutes later, 7:54 a.m., was:

0 4 : 5 3 15 "I don't know, dude. This place is kind of messed up. Already
16 I have enemies and it's day three."

17 A. Uh-huh.

18 Q. You don't remember writing that either, do you?

19 A. Nope.

0 4 : 5 3 20 Q. Do you have any idea -- well, if you don't remember writing
21 it, can you tell us today what was in your mind when you wrote
22 it?

23 A. Well, I had enemies.

24 Q. Pardon me?

0 4 : 5 3 25 A. Well, I had just been raped.

0 4 : 5 3 1 Q. Okay.

2 A. Also, I was told that night that Charles Bortz was going to
3 break up with his girlfriend anyway. So --

4 THE COURT: Okay. But why -- what prompted this
0 4 : 5 4 5 particular language, is what's being asked.

6 THE WITNESS: Well, I had enemies; the rapist and -- I
7 think I was just really confused. I was under the influence of
8 a rape facilitation drug.

9 BY MR. MCKINNEY:

0 4 : 5 4 10 Q. Okay. Now, you told the State Department investigators
11 that you got a text message from Charles that morning, just a
12 general greeting saying hello to you, correct?

13 A. I don't know what it said. I don't even -- did it even say
14 on there?

0 4 : 5 5 15 Q. Well, let's look at -- let's go back to B67.

16 A. Okay.

17 Q. And if we go to the last page, Item 10.

18 A. Oh, okay.

19 Q. And beginning when it's -- with the second sentence,

0 4 : 5 5 20 starting with "When RA and SA." Directing your attention to
21 that sentence right there, beginning with the word "in," it
22 looks like you were questioned again on July the 30th. Do you
23 see that?

24 A. Oh, okay. Yes.

0 4 : 5 6 25 Q. And you were asked if you had e-mailed or telephoned Bortz

0 4 : 5 6 1 or anyone who was present at the party. You denied contacting
2 Charles Bortz, but you said that you received a text message
3 from him that morning; you couldn't recall what the message
4 stated, but that it was a general greeting.

0 4 : 5 6 5 So, that's something -- you wouldn't have made
6 that up if the agents wrote that down. And you probably got a
7 text message from Charles that morning that -- when you were in
8 the office giving you a general greeting of some kind. Fair
9 statement?

0 4 : 5 6 10 A. Fair statement.

11 Q. "Additionally, Jones informed the investigator that she
12 recalled Simco e-mailing her and informing her that she had
13 left a notebook in her office. Jones stated that the notebook
14 contained some written credit card numbers."

0 4 : 5 7 15 And that was on the 30th. Do you recall
16 receiving that -- do you recall receiving that e-mail from Sara
17 Simco?

18 A. Apparently I recalled it then.

19 Q. All right. Do you recall it today?

0 4 : 5 7 20 A. I remember the notebook with the credit card numbers.

21 Q. All right. Let's drop down to Item 15, and we'll be done
22 for the day.

23 A. Okay.

24 Q. On August 31st, you called the agent on his cell phone. By
0 4 : 5 7 25 this time, were you back in the States?

04:57 1 THE COURT: By August 31st.

2 THE WITNESS: Oh, yeah. I was looking for the date.

3 BY MR. McKINNEY:

4 Q. August 31st, you call the agent on his cell phone. You

04:57 5 stated that you recalled receiving the e-mail from Simco, as

6 you previously had told the agent, but now you have some

7 additional information. You stated that in the body of the

8 message, Simco mentioned something to you about Bortz'

9 girlfriend returning to Iraq. "Jones informed the agent that

04:58 10 she felt she should be the one to relay the information to

11 Bortz' girlfriend, as she was the one involved."

12 Do you recall any of that activity?

13 A. Yes. And -- sorry -- as you recall, I had access still to

14 my e-mail. So, I probably read the whole e-mail and saw that

04:58 15 in there and decided I wanted to make sure the record was

16 straight.

17 MR. McKINNEY: It's a good stopping point, your Honor.

18 THE COURT: All right.

19 MR. KELLY: Before we go, your Honor, could we have

04:58 20 the rule of completeness. There's a whole section of Number 9

21 that was left out.

22 THE COURT: Let me check Rule 9 -- I mean,

23 Paragraph 9.

24 MR. KELLY: Paragraph 9 starts at Line 3 with the word

04:59 25 "Jones," and goes to the word "unprotected," which is five

04:59 1 lines up. It was not read to the jury. Everything else on
2 this document seems to have been.

3 MR. MCKINNEY: As I told the witness, I would be happy
4 to go over that with her if she wanted to, or we could skip it.

04:59 5 THE WITNESS: Yeah, you said that.

6 THE COURT: Yeah. And I think this is -- this is --
7 we've heard this before. I don't think it's necessary.

8 MR. KELLY: All right.

9 THE COURT: Is 8:30 still convenient?

04:59 10 All right. Would all rise for the jury, please.

11 *(Jury not present)*

12 THE COURT: Everyone may be seated. The clerk who
13 received this mysterious phone call knows something about our
14 case and he thought what he heard was Eisenmann and he thought
05:00 15 may be -- the closest thing he could think of was Meisner. He
16 Googled the phone number and it turns out -- I don't -- this
17 may not -- this may compound the mystery -- that the phone
18 number is for Eisemann, E-I-S-E-M-A-N-N, Cosmetic Day Surgery
19 Center.

05:00 20 MR. KELLY: That is our witness.

21 THE COURT: That is your witness. Okay. All right.

22 MR. ESTEFAN: That's correct.

23 THE COURT: But the message was that doctor wanted me
24 to call him, and I don't want to do that. So, you take care of
05:00 25 it.

05:00 1 MR. ESTEFAN: No, no. We'll contact him, Judge.

2 MR. McKINNEY: Judge, I have a note from your clerk
3 that I failed to move for the admission of Bortz 164. It's the
4 St. Luke's Community Medical Center record. Is that --

05:01 5 MR. ESTEFAN: Has that been referred to?

6 MR. McKINNEY: Oh, yeah, I examined her thoroughly on
7 it. It's either the blackout or --

8 MR. KELLY: That was the one we didn't know if you
9 redacted yet. As long as it's redacted, I don't have an
05:01 10 objection to it, your Honor.

11 MR. McKINNEY: Subject to redaction, I move for the
12 admission of Bortz 164.

13 THE COURT: Admission granted. Thank you.

14 MS. VORPAHL: You didn't do Joint Exhibit 133 either,
05:01 15 but I think the joint exhibits are in.

16 THE COURT: Yeah.

17 MS. VORPAHL: So, we don't have to move joint
18 exhibits?

19 THE COURT: No.

05:01 20 MS. VORPAHL: Thank you.

21 THE COURT: You-all work out that amongst yourselves.
22 We've got two other issues, I understand, you want to discuss.
23 Apparently KBR wants to talk about Jones' page and line
24 designations; and then I guess there's some lingering issue
05:02 25 about hearsay within hearsay under B98?

05:02 1 MS. VORPAHL: The page and line --

2 MS. CATES: Pages and lines were -- this is brief,
3 your Honor. Page and lines were due awhile back before the
4 trial started. Jones has amended hers and supplemented twice,
05:02 5 once last night. I mean, these are the new ones just for two
6 of the witnesses. So, we would have to start over if the Court
7 allows this late amendment. They've mentioned that they'll get
8 us the rest this week.

9 We've already done all of our page and lines for
05:02 10 theirs. You've asked us to designate cross and direct. So, we
11 did do that yesterday; but we didn't designate new testimony.
12 We just put either it's cross or direct. Now we would have to
13 go -- start all over, make all the new objections, redo all of
14 our directs and crosses, redo the electronic cuts. At this
05:02 15 late stage of the game, your Honor, we would just ask that they
16 need to stand on their last set from a week ago.

17 MS. MORRIS: Your Honor, we did go back and remove
18 any -- I think it was references to attorneys representing
19 them.

05:03 20 THE COURT: You have to be near the mic. I'm sorry.

21 MS. MORRIS: We removed any statements with regard to
22 KBR representing some of the witnesses at the grand jury. And
23 then there were also some additions and I believe some -- some
24 things removed but not much.

05:03 25 MS. CATES: I mean, look at the amount of page and

05:03 1 lines just for two of the depositions.

2 MS. MORRIS: That hasn't increased.

3 MS. CATES: The highlighting is what I'm told has
4 changed, my paralegal.

05:03 5 MS. MORRIS: It may have changed, but it hasn't
6 increased. Some of them have --

7 MR. KELLY: A lot of it has changed in accordance with
8 the Judge's ruling that we have to add the first part of the
9 question and the last part of the answer. And you asked for
05:03 10 that; and so, we changed it.

11 MS. HOLCOMBE: That was changed, actually, in the one
12 before this one that we just got because I did go through
13 those; and those were actually -- those were changed to have
14 the beginning and the end, which was great. And so, we didn't
05:03 15 know there would be any more other than the grand jury
16 references being taken out. So, we didn't know what else --

17 MR. ESTEFAN: I think the implication, Judge, is that
18 we're trying to sneak in some new stuff --

19 MS. HOLCOMBE: No.

05:04 20 THE COURT: No, I don't think they're saying that.
21 They're just saying that they're just not set up to respond to
22 it.

23 MR. ESTEFAN: Well, they're doing -- I mean, as
24 recently as this weekend, they were sending stuff over to us,
05:04 25 too.

05:04 1 MS. CATES: But it's nothing new. It's just
2 exactly page and --

3 MR. ESTEFAN: Well, either is ours.

4 MS. CATES: -- line, cross or direct. My paralegal
05:04 5 says that everything on that page highlighted is different.

6 MS. MORRIS: Right. Much of what the changes are are
7 introductions to the witness that we had designated lines to
8 even introduce the witness. I've added introductions.

9 THE COURT: No, I'm not faulting what you tried to do.
05:04 10 The question is the timing and what it does to your
11 adversaries.

12 MR. KELLY: It's exactly -- I mean, as Mr. Estefan
13 says, your Honor, this weekend I was receiving new page and
14 line references from my adversaries. We're not doing -- and I
05:04 15 don't purport that they're doing anything untoward either. I'm
16 sure that they're trying to clean up their page and lines to
17 add introductions and so forth, as are we. We're not doing
18 anything that is beyond this Court's rule.

19 MS. CATES: We did not add any intros or try to clean
05:05 20 anything up. We split everything into either cross or direct.
21 We thought that was what you wanted to do with the depositions.

22 THE COURT: That's what I told you to do.

23 MS. CATES: So, we had to do that.

24 MS. HOLCOMBE: Respectfully, your Honor, when the --
05:05 25 the Court's ruling on Wednesday of the pretrial conference -- I

05:05 1 don't remember the date -- when it was decided that we would
2 need to have full answers and full questions, we did not
3 receive their full answers and full questions until Monday, the
4 beginning of trial. And then we've been moving forward with
05:05 5 trial. So, this weekend was the first time we were able to
6 respond and come up with our crosses and our directs when we
7 didn't receive them until trial had already begun, which was
8 five days after your ruling. So, we were delayed on that
9 aspect is why it took us so long to divide ours into cross and
05:05 10 direct and that's all we were trying to do was --

11 MS. CATES: You know, some of these witnesses they
12 indicate will be called tomorrow. We got this e-mail at
13 11:00 o'clock last night. And they purport that they're going
14 to have them for the rest of the deposition, and it just seems
05:05 15 very late in the game for this.

16 THE COURT: Well, what -- okay. If we assume that
17 plaintiffs' memory is correct and that these are all to take
18 care of ridding the transcript of grand jury references, don't
19 we need that?

05:06 20 MS. CATES: There are only, I think, four grand jury
21 references that were designated in what they gave us last week,
22 not last night; and we brought those to their attention. So,
23 that long list cannot account for four grand jury references.
24 It can't.

05:06 25 THE COURT: These discovery fights in the middle of a

05:06 1 trial are so hard. Does anybody have a suggestion as to how to
2 resolve this one? I mean, is it all or nothing, either it all
3 comes in or nothing does?

4 MS. VORPAHL: Our legal assistant is here and she's
05:07 5 the one who's made the best review during the day today, so --

6 THE COURT: I don't have any doubt as to what each of
7 you has said. It's not that I doubt the truthfulness of
8 anything. I'm just trying to see a way home right now.

9 MS. VORPAHL: What she would tell you -- and she can
05:07 10 certainly speak for herself -- is that there are whole pages
11 added and it's just problematic at this late time for them to
12 have to stay up again all night tonight trying to worry with
13 new designations.

14 MS. CATES: And new objections and new electronic cuts
05:07 15 for these that are going to be called as early as tomorrow.

16 MS. MORRIS: Your Honor, again, what I did was I
17 eliminated according to the Judge's rulings and then also at
18 the beginning did an introduction as to who the witness was,
19 how long they've been working in KBR, in what position. There
05:07 20 may have been one or two substantive additions to the page and
21 line, but it wasn't significant.

22 MR. HEDGES: May I make a suggestion?

23 MS. MORRIS: There's a highlight indicating each
24 change that's been made, but that doesn't mean it's a
05:08 25 substantive one.

05:08 1 THE COURT: Here's what we're going to do. To the
2 extent you want to introduce anyone, you can either do that by
3 standing up and say, "This is Joe Smith. He's been with the
4 company for 10 years. His position is sales." To the extent
05:08 5 there's a -- it's only an excision of references to grand jury,
6 we'll let those stand. But anything -- all the other
7 supplements to your original list or to your last list are not
8 going to be allowed. It's too big a change too late in the
9 game.

05:08 10 You can provide the introduction orally or you
11 can ask me to do it; and to the extent there's -- the only
12 change is a grand jury deletion, that will be allowed. And the
13 same will be true of defendants. I don't want anything more
14 than that. If you notice you haven't provided a proper intro
05:09 15 for a witness, I'll allow that. If you're making a cut for a
16 grand jury reference, I'll allow that.

17 MR. KELLY: Your Honor.

18 THE COURT: Here you go.

19 MR. KELLY: While the jury is out, this morning we
05:09 20 brought up the issue of Patty Chapman from Congressman Poe's
21 office. We would like to bring her to testify as early as
22 tomorrow, possibly Wednesday; but obviously if -- I would like
23 to know --

24 THE COURT: That's an issue that I didn't want to
05:09 25 spend a lot of time on while we had the jury waiting. I think

05:09 1 the headnote, at least, to the objection is that she could have
2 been deposed at any time during the lengthy run up to this
3 case; and that hasn't been done. Is that right?

4 MS. VORPAHL: That's exactly right. Her name is in
05:09 5 the chronology page. I haven't had a chance to look at
6 Representative Poe's entire file but -- because we just got
7 this from them this morning. And I'll be happy to do that, but
8 I know it's on the chronology page.

9 THE COURT: Okay. Well, I'm not --

05:10 10 MS. CATES: She's never been on the witness list.

11 THE COURT: Okay. What is she being -- was
12 Congressman Poe ever going to be a witness in this case?

13 MR. ESTEFAN: He was subpoenaed, Judge.

14 MR. KELLY: He was subpoenaed. It was -- we intended
05:10 15 to call him, Judge.

16 THE COURT: Well, didn't he know? I mean, there are
17 Constitutional reasons you can't do that. Do you know that, in
18 the speech and debate clause --

19 MR. KELLY: I understand that; but our understanding,
05:10 20 though, is that they had been in recess and he had been in the
21 State --

22 THE COURT: Well, it doesn't matter whether they're in
23 recess or not. He can't be -- he can't be -- he cannot be
24 forced to answer questions about anything that has to do with
05:10 25 Congressional activity unless there's a very high standard of

05:10 1 proof met.

2 MR. KELLY: It wasn't the Congressional activity,
3 though, your Honor, that we wanted Congressman Poe to come
4 testify for. Whatever he did on the floor of the House, that
05:10 5 wasn't what we were calling -- we were calling him specifically
6 for his --

7 MR. MCKINNEY: Your Honor --

8 MR. KELLY: -- specifically to --

9 THE COURT: What is Ms. Chapman -- is that her name,
05:10 10 Chapman?

11 MR. KELLY: Yes, Patty.

12 THE COURT: What's she going to testify about?

13 MR. KELLY: She's going to say, your Honor, that she
14 received the phone call from Tom Jones, Jamie's father, and --
05:11 15 while Jamie was still in the trailer and that she called Jenny
16 Foo and directed Jenny Foo, on behalf of Congressman Poe, to
17 send agents to get Ms. Jones out of that trailer.

18 MS. VORPAHL: She can't possibly say that. She
19 doesn't know whether -- when Jamie Jones was in the hooch and
05:11 20 when she wasn't. She can't possibly testify to that.

21 MR. KELLY: That sounds like cross-examination, your
22 Honor; but that is what she says. And I met with her
23 yesterday. After she sent the e-mail yesterday morning, she
24 came up to my office and we met and that is what she will say
05:11 25 is that she got the phone call while Jamie was still in the

05:11 1 trailer, that that's what she communicated to Jenny Foo.

2 THE COURT: What's her basis for saying Jamie was
3 still in the trailer?

4 MR. KELLY: Because when Tom Jones called her, he
05:11 5 called her with the emergent situation --

6 THE COURT: I know --

7 MR. KELLY: -- of his daughter still being locked in
8 the trailer.

9 THE COURT: So, it's Mr. Jones' hearsay statement
05:11 10 to -- well --

11 MR. HEDGES: It's much easier than that, your Honor.
12 Here's the entry from the phone logs of Congressman Poe. I
13 have no doubt that she called the State Department. I have no
14 doubt she received a call from Tom Jones, but here's: "Father,
05:12 15 Thomas Jones, called to say" --

16 THE COURT: Slow down.

17 MR. HEDGES: I'm sorry. "Father, Thomas Jones, called
18 to say that his daughter was brutally raped in Baghdad by
19 civilians with Halliburton, 12:58 p.m., Washington DC time
05:12 20 7-29. She was taken into custody by the department on 7-28."

21 So, she was in Iraq in a trailer; but it was the
22 State Department's trailer and she had been in the custody of
23 the State Department for a number of hours, if not half a day
24 or so.

05:12 25 MR. KELLY: And she will testify, your Honor, that the

05:12 1 timing of that particular report is inaccurate. I actually
2 asked her about that yesterday, and that's why I think that she
3 needs to come in to refute what Mr. Hedges is holding in his
4 hand right there.

05:12 5 THE COURT: How could she possibly refute whether
6 Ms. Jones was or was not in a given trailer? How could she
7 possibly refute that?

05:13 8 MR. KELLY: Because she got a report back actually
9 from Ms. Foo that the agents had gone into the trailer -- after
10 she had asked that they go in, that the agents had gone into
11 the trailer and had, in fact -- and they used the word
12 "rescued" -- and had, in fact, rescued Ms. Jones from that
13 trailer and that they now had her in custody. And the sequence
14 of events coming out of her office makes it clear that
05:13 15 Ms. Jones was being held against her will by KBR and that the
16 state -- the security -- excuse me -- the Department of State
17 had to go in and get her out.

18 THE COURT: So, she was doing the phone work?

19 MR. KELLY: She was, your Honor.

05:13 20 THE COURT: Then why was Congressman Poe ever going to
21 be used as a witness? I don't understand that we --

22 MR. KELLY: Because the --

23 THE COURT: -- we have one person that didn't have the
24 information and then we skipped a person that did the
05:13 25 information and --

05:13 1 MR. KELLY: Because we really didn't know she had done
2 the phone work until yesterday, your Honor. Ms. --

3 MS. VORPAHL: Her name is all over this document. May
4 I pass it up?

05:14 5 THE COURT: I mean, we can't even agree on a timeline
6 as to when she was moved from one --

7 MR. HEDGES: I think we do, your Honor. I don't think
8 there's any question of that timeline. She herself said, "Now
9 that I know all the information, I know -- I know I was in the
05:14 10 trailer for about six hours." She was in the trailer from
11 about 2:00-something in the afternoon till about 8:00-something
12 at night. At 8:00-something at night, the State Department
13 took custody of her and took her to a -- took her to a State
14 Department container, which is where the Gurkha guards were
05:14 15 located, not KBR.

16 THE COURT: Does everybody agree on that timeline?

17 MR. KELLY: I think we agree that's the timing of the
18 movement except for, your Honor, the fact that the statement
19 that we've seen several times now -- and it's a joint exhibit.
05:14 20 It's a statement that Jamie made while in that trailer -- was
21 made after 8:00 o'clock. We can -- very clearly the State
22 Department was supposed to be in charge at that point in time.
23 So, it's not exactly clear when Ms. Jones was moved from the
24 trailer because Jamie Armstrong was still with her in the
05:14 25 trailer after the time she was supposed to be.

05:14 1 So, I think that what Mr. Hedges says is close;
2 but I don't think it's exactly right because clearly after the
3 State Department gets involved, Ms. Jones is still in the
4 trailer giving a statement to Ms. Armstrong.

05:15 5 MS. HOLCOMBE: Your Honor, may I say something? Two
6 things. One, if Ms. Chapman -- is that her name?

7 MR. KELLY: Yes.

8 MS. HOLCOMBE: If Ms. Chapman was allowed to come in
9 and testify, she would be essentially stating statements that
05:15 10 were made out of court that Congressman Poe told her, that
11 Congressman Poe says that Tom Jones told Congressman Poe and,
12 therefore, that would be --

13 MR. HEDGES: No.

14 MR. KELLY: No.

05:15 15 MR. HEDGES: Calls were to Ms. Chapman. The calls
16 weren't to Congressman Poe.

17 MS. HOLCOMBE: Or that Mr. Poe -- I'm sorry, that
18 Mr. Jones, then, told her out-of-court statement to
19 Ms. Chapman. And so, therefore, it would be hearsay.

05:15 20 But a bigger issue, your Honor, I think is the
21 non-disclosure under the discovery rules because of the fact
22 that they've had this document, Ted Poe's Number 4, where it's
23 had her name on it where if the phone calls were made to her,
24 then they would be persons of knowledge of relevant facts under
05:15 25 the rules and in their interrogatory responses, they would have

05:16 1 listed her as a person with knowledge of relevant facts or even
2 on their witness list. So, this isn't a new or -- surprise for
3 them. It's unfair surprise for the KBR defendants.

4 MS. VORPAHL: It may be elsewhere in the file. That's
05:16 5 just the one sheet we have in here right now.

6 MR. KELLY: And I would say that's not at all true,
7 your Honor. In fact, they have had the exact documents we've
8 had all along. There's certainly no unfair surprise. The
9 witness contacted us yesterday, and we're standing here today
05:16 10 asking --

11 THE COURT: I know they've had the documents all
12 along. There's no reason for them to want to talk to her,
13 unless you were going to use her. I think that's the point,
14 isn't it?

05:16 15 MR. HEDGES: It is.

16 MS. HOLCOMBE: Yes, your Honor.

17 THE COURT: No, I'm afraid I can't allow it. I'm
18 sorry.

19 MS. MORRIS: Your Honor, if we could just address one
05:16 20 more issue with the page and line designation. We have some
21 objections to the defendants' cross and direct.

22 There's a lot of discussion about Mr. Bortz'
23 position, how it was dangerous and how he managed several
24 firefighters and they would go out and --

05:17 25 MS. CATES: Whose depo are we on?

05:17

1 MS. MORRIS: I'm sorry?

2 MS. CATES: Whose depo are we on?

3 THE COURT: Are we on the depo of Mr. Bortz?

05:17

4 MS. MORRIS: No. Actually, it would be for -- I

5 believe Bortz talks about it also, but it's one of the -- it
6 wouldn't be Simco. It's probably --

7 MR. ESTEFAN: Probably Tyler Schmidt.

8 MS. MORRIS: Tyler Schmidt.

9 MR. ESTEFAN: Because he's a firefighter as well.

05:17

10 MS. MORRIS: But there's a long discussion about how
11 Bortz' position was dangerous and how they would go out and
12 they would be in dangerous positions with bombs and --

13 THE COURT: Your objection is relevance or --

14 MS. MORRIS: Relevance, yes.

05:17

15 THE COURT: -- or 403 or --

16 MS. MORRIS: Both. First relevance and then 403.

17 It's just an attempt to --

18 THE COURT: Bolster?

19 MS. MORRIS: Yes.

05:17

20 THE COURT: Okay.

21 MR. McKINNEY: Judge, there have been -- there has

22 been mountains of -- if that's bolstering, then Ms. Jones

23 bolstered for a good portion of her direct examination talking

24 about her college professorship and her foundation and her this

05:18

25 and her that, none of which prove or disprove any of the facts

05:18 1 of this case.

2 THE COURT: And Mr. Bortz will be allowed to go into
3 what he did when he takes the stand. Why do we need somebody
4 else talking about what Mr. Bortz did?

05:18 5 MR. McKINNEY: Well, it's a little bit much for me to
6 bring my client in and say, "Tell us all the wonderful things
7 that you've done or tell us about your job and was it
8 dangerous," because he's an accused --

9 THE COURT: You're saying Ms. Jones did that?

05:18 10 MR. McKINNEY: Well, Ms. Jones has a different
11 approach to things than I do. If a witness wants to come in
12 and is willing to come in and swear under oath that this is
13 what Charles Bortz did over there and this is the kind of
14 person he was, then it's relevant to this lawsuit. It tells
05:18 15 the jury about this man and who he is and what he's done and
16 it's called placing the witness and it's allowed.

17 MS. CATES: I mean, for Tyler Schmidt, if that's who
18 we're talking about -- I don't have exact page and lines -- it
19 looks like it's a page and a half of talking about what firemen
05:19 20 do. That's what these guys are over there, they're firemen.
21 They need to be able to say -- I mean, this isn't pages upon
22 pages; but to take a minute or two out to say, "This is kind of
23 what we were doing over there on a day-to-day basis" just helps
24 place the witnesses.

05:19 25 THE COURT: Well, you know, I haven't read those

05:19 1 depos. Let's see.

2 MS. CATES: Your Honor, I think I have what she might
3 be talking about. Are you talking about Page 6 and 7?

4 THE COURT: Under what rule of evidence is this being
05:19 5 offered?

6 MS. CATES: I'm sorry. I didn't hear the question.

7 THE COURT: What -- I was asking, actually, plaintiff:
8 What rule of evidence is this being offered under?

9 MR. McKINNEY: It's being objected to by the
05:20 10 plaintiffs.

11 MS. MORRIS: Yes, your Honor.

12 THE COURT: I mean objected to.

13 MS. MORRIS: We're objecting as far as relevance and
14 then 403.

05:20 15 THE COURT: Okay. It's not being -- okay. You think
16 it does meet the 608 test for evidence of character and conduct
17 of a witness? That seems to me a closer call.

18 MS. MORRIS: Your Honor, we don't have an objection as
19 to anyone talking about their job, their position, and what
05:20 20 they did; but it goes beyond that and it talks about how there
21 was car bombs and it's -- it's just attempt to show that
22 there's --

23 MR. ESTEFAN: And body parts.

24 MS. MORRIS: And body parts and that no one was
05:20 25 injured but they were definitely going into very dangerous

05:20 1 situations and Mr. Bortz was able to bring them all out safe.
2 It's just an attempt to prejudice the jury into thinking
3 that -- and also bringing in the whole idea of the war zone.

4 MS. VORPAHL: Which several of the witnesses they've
05:20 5 called have already done.

6 MR. MCKINNEY: And Ms. Jones has opened that topic up
7 herself talking about how she was transported from the airport
8 to the Green Zone and the dangers and this, that, and the other
9 thing. You know, it's just a flip side of Ms. Jones' testimony
05:21 10 about herself.

11 MS. CATES: And she's also said, "These firemen were
12 heroes, that's why I trusted myself with them." I mean, this
13 is what they do.

14 THE COURT: Okay.

05:21 15 MS. CATES: Your Honor, I think the orange is what
16 we've designated.

17 THE COURT: Okay. They're referring to a passage on
18 Page 6 of Mr. Schmidt's deposition all the way to Page 8 --
19 let's see -- and a small snippet on Page 9.

05:21 20 MS. VORPAHL: And quite frankly, I think all of these
21 witnesses will talk about it being a war zone, on both sides,
22 and have already.

23 THE COURT: Well, okay. If we really are talking
24 about Pages 6 through the bottom of Page 7, that's all right.
05:23 25 I'll allow that.

05:23 1 MS. MORRIS: Your Honor, I have a couple other
2 objections to the page and line.

3 THE COURT: Okay. Take this back.

4 MS. VORPAHL: Thank you.

05:23 5 MS. MORRIS: They designated a portion of Ms. Simco's
6 testimony where she talks about Ms. Jones' dress and makeup and
7 says that it's inappropriate for the workplace and we object
8 based on it's not relevant for --

9 MS. HOLCOMBE: Response, your Honor?

05:23 10 THE COURT: Yes, ma'am.

11 MS. HOLCOMBE: Plaintiffs have also designated
12 discussion towards the end -- and I will get you the page and
13 line -- that discusses her makeup and attire and what that
14 would possibly mean and whether that was Ms. Simco's job to
05:23 15 inform her about that or not. Therefore, they have -- also
16 have designations relating to the same topics; and so, I'm
17 confused as to --

18 THE COURT: About how she's dressed for the workplace?

19 MS. HOLCOMBE: Yes, sir.

05:24 20 THE COURT: These are hard for me to resolve. I don't
21 know what's coming in.

22 MR. McKINNEY: Well, the testimony, Judge, I think,
23 is -- implicit in the testimony and it is -- the door's been
24 opened by Ms. Jones herself. Ms. Jones discussed her reasons
05:24 25 for her breast augmentation and they were all -- you know, had

05:24 1 nothing to do with wanting men to look at her or --

2 THE COURT: Yes, yes.

3 MR. McKINNEY: -- anything in that way.

4 THE COURT: Yes.

05:24 5 MR. McKINNEY: And the testimony that Ms. Simco is
6 going to offer is that, in fact, Ms. Jones did dress
7 provocatively and did --

8 THE COURT: So, it goes to credibility?

9 MR. McKINNEY: -- prominently display her assets.

05:24 10 THE COURT: So, this goes to credibility?

11 MR. McKINNEY: Yes, it does.

12 MS. MORRIS: How she -- I'm sorry. Was it that she
13 prominently displayed her assets? Ms. Simco talks about how
14 she dresses and her makeup. She doesn't talk about any showing
05:25 15 of her breast implants.

16 THE COURT: Tell me specifically what she said. What
17 specifically did she say?

18 MS. MORRIS: She said that she dressed inappropriately
19 for the office and she wore too much makeup.

05:25 20 THE COURT: That doesn't really seem responsive to why
21 she got her breast augmentation, does it?

22 MR. McKINNEY: I think there's more to it than that;
23 but the context of the testimony, if it goes to the jury, will
24 simply rebut the general line of testimony offered by --
05:25 25 volunteered by Ms. Jones that none of her breast augmentation

05:25 1 or her other activities are to cause men to look at her --

2 THE COURT: But I don't really see Ms. Simco's
3 testimony responsive to that if all she's saying is she dressed
4 appropriately. That could have been --

05:25 5 MR. McKINNEY: She also says that Ms. Jones commented
6 that she wished she had gotten even larger breast implants.
7 And there will be a place in Ms. Jones' own records to her
8 doctor after the initial augmentation where Ms. Jones
9 complained that her breasts weren't large enough.

05:26 10 THE COURT: Well, but there again, the reasons she
11 stated on the stand for why she got those might still be
12 responsive to the issue of why she wants even larger breasts.
13 She said she wanted to fill out her clothes better -- I don't
14 know. I'm not an expert on this at all.

05:26 15 MR. McKINNEY: I'm not either, Judge; but it sounds
16 like it's all part of the same program to me and the jury ought
17 to be allowed to sort it out.

18 THE COURT: Okay. But just saying she dressed
19 inappropriately, for all we know it could have been she showed
05:26 20 up in clothes from three seasons ago or whatever. I don't
21 think that's responsive to her -- to the size of her breasts.
22 I really don't. And if that's the only connection, then I
23 don't think we need that. I think it's more prejudicial than
24 probative.

05:26 25 Now, if she's saying she -- if something that

05:26 1 specifically says she wore low-cut blouses or something like
2 that or see-through blouses, that might be a slightly different
3 point. I -- this is all so uncomfortable.

05:27 4 MS. HOLCOMBE: Your Honor, we're fine to take it out
5 so long as opposing counsel takes out their page and line
6 designation 84, Line 8 through 86, Line 10 that talks about
7 this exact same discussion.

05:27 8 MS. MORRIS: Yes, your Honor. We only put that in
9 there because we wanted to put it out there first if they were
10 permitted to talk about it.

11 THE COURT: Okay. Let's take them both out.

12 MS. CATES: Your Honor, we do have other objections to
13 page and lines. I don't know that we need to do them all here
14 and today. We're happy to --

05:27 15 THE COURT: I would rather do them here than delay the
16 jury, but what are you -- the reason we don't need to do them
17 is what? They may not be used, is that the point?

18 MS. CATES: We just know the next three are coming up.
19 I didn't know if you wanted to handle the first three depositions;
05:27 20 and then when they're ready, we can do them all.

21 THE COURT: We might as well keep going. Anybody that
22 needs to leave may do so. Thank you.

23 MS. VORPAHL: Your Honor, may I be excused just
24 briefly?

05:28 25 THE COURT: Anybody that wants to leave can.

05:28 1 MS. VORPAHL: I will be right back.

2 MR. ESTEFAN: While we're rounding up the troops,
3 Judge, I believe the jury asked for what witnesses are coming
4 tomorrow. And so, for the Court -- and I've told opposing
05:28 5 counsel this -- Sara Simco, Anthony Adams, and Tyler Schmidt.

6 THE COURT: Sara Simco. Let me write this down.

7 MR. ESTEFAN: Now also known as Sara Tumbarella; but,
8 yes, the same person.

9 THE COURT: Sara Simco, Anthony Adams.

05:28 10 MR. ESTEFAN: Anthony Adams and Tyler Schmidt. They
11 will all be by videotaped deposition, which is what we're about
12 to discuss right now. And then, Judge, because we've got page
13 and lines and we think the total run time for those three
14 depositions is not going to be all that long, we may then call
05:28 15 the next witness after that, who I believe we're going to -- it
16 wasn't who we intended to call, but it will be Mr. Andino.

17 THE COURT: What's his first name?

18 MR. ESTEFAN: Gabe Andino. He's the gentleman sitting
19 at KBR's counsel table.

05:29 20 THE COURT: Gabe?

21 MR. ESTEFAN: Gabriel.

22 THE COURT: Gabriel.

23 MR. ESTEFAN: Yes. And that just -- all that depends,
24 your Honor, on how long -- but here's why I am advising the
05:29 25 Court that, your Honor. If we go long on Jamie tomorrow on the

05:29 1 cross, then the videos may be all we get to because we have a
2 different witness, a doctor coming Wednesday morning. We have
3 a doctor coming Wednesday morning.

4 THE COURT: Okay.

05:29 5 MS. CATES: And I think we've got a witness from
6 Afghanistan that Ron has agreed to bring in on Wednesday,
7 because she's got to go back to Afghanistan.

8 MR. KELLY: Out of order.

9 MS. VORPAHL: Out of order.

05:29 10 MR. ESTEFAN: Who's that again, please? Tell me.

11 MS. CATES: Kimberly Nichols.

12 THE COURT: Okay. Let's go back to page and lines.

13 MS. CATES: Shall we continue page and lines?

14 The one I have for Tyler Schmidt -- I'll pass it
05:29 15 up -- I think it calls for speculation. It's a lay opinion,
16 and it's prejudicial. Sort of testimony by the attorney.

17 MS. MORRIS: Is this it?

18 MS. CATES: The highlighted section is our page and
19 line.

05:30 20 THE COURT: Yeah. Okay. The question, I guess, by
21 Mr. Kelly: "Okay. And, in fact, if a woman had to ask if she
22 had sex with you, that would tend to indicate that she couldn't
23 really have consented, huh?

24 "ANSWER: Yeah."

05:30 25 It's Mr. Schmidt's depo.

05:30

1 Okay. Response?

2 MR. KELLY: Well, your Honor, he's a KBR fireman.

3 Therefore, I think he's probably an expert. I'm joking.

05:30

4 THE COURT: Okay. Yeah. I think your response is it
5 a leading question, but it's a hostile witness. So, it comes
6 in?

7 MR. KELLY: Yes, sir.

8 MS. CATES: It calls for speculation. It's an
9 improper lay opinion and it is -- I think it's just confusing.

05:30

10 He wasn't there.

11 MR. KELLY: I don't think it's confusing at all. I
12 think it's pretty straightforward.

13 THE COURT: But how would he know that those were the
14 only circumstances under which she couldn't possibly have
15 consented or that those are things that would include
16 circumstances -- I'm not going to allow that, no.

05:31

17 MS. CATES: All right. Thank you, your Honor. That
18 concludes my objections for Tyler Schmidt, if we're going to go
19 one by one.

05:31

20 THE COURT: Tyler Schmidt, anything from you guys?

21 MR. KELLY: No.

22 THE COURT: Okay. Next witness?

23 MS. HOLCOMBE: Your Honor, for Anthony Adams, there's
24 an entire -- let me start with the first one, your Honor.

05:32

25 It's -- I have copies. Oh, there. Here's a copy for you, copy

05:32 1 for the Judge.

2 Your Honor, for Page 21, we're objecting to
3 everything in pink. The yellow -- just my color coding -- is
4 their designation, and the pink is what we objected to.

05:32 5 Your Honor, we object to Lines 20 through 22 --
6 in fact, Ms. Vorpahl even states it in the deposition -- as it
7 mischaracterized the evidence and assumes facts not in
8 evidence. It assumes that men are sexually harassing women in
9 this question rather than a simple question.

05:32 10 MR. KELLY: Well, your Honor, I think their evidence
11 has come in now and although there may have been no evidence
12 from this witness that there was sexual harassment, the point
13 of the matter is that because he doesn't see corrective action
14 being taken and because it is, in fact, happening, that that --
05:33 15 and we've heard the testimony from not only Amy Katz but also
16 Kara Hall -- the failure to enforce those policies is exactly
17 what leads to increased problems and so --

18 THE COURT: Well, the questions that are posed here
19 are so intuitively obvious that I don't think they need any
05:33 20 emphasis in front of a jury. You don't see all the
21 disciplinary actions taken or the lack thereof against men who
22 sexually harass women. Of course they don't -- nobody sees all
23 of them. I'm not going to allow this.

24 MR. KELLY: Your Honor, they don't --

05:33 25 MS. HOLCOMBE: Your Honor -- I'm sorry.

05:33 1 MR. KELLY: Don't they make a proffer in this, though,
2 about the fact that he doesn't see anything -- is that what you
3 want to talk about?

4 MS. HOLCOMBE: Yeah.

05:33 5 MR. KELLY: Go ahead.

6 MS. HOLCOMBE: On Page 20, Line 14 to Page 21, Line 2,
7 Mr. Adams is asked whether or not male employees are held to
8 KBR's harassment policy without any basis before asking that
9 question. And that's in their direct. I'm sorry.

05:34 10 MR. KELLY: It's the reverse of this, your Honor.
11 He's saying, "Yeah, we're held to the same policies," and this
12 question --

13 THE COURT: Okay. This doesn't come in either.

14 Okay. What else?

05:34 15 MS. HOLCOMBE: Your Honor, if I could turn to --

16 MS. CATES: Okay. While she's looking for that, I can
17 switch over to Rumba.

18 THE COURT: Okay.

05:34 19 MS. CATES: Here's the first one, Stephanie, at
20 Page 27, Lines 14 to 25, if you want a copy just so you don't
21 have to dig for it. It assumes facts not in evidence and it's
22 confusing for the witness and it mischaracterizes Pete Arroyo's
23 testimony.

05:35 24 THE COURT: Okay. What -- my question of this is not
25 so much it's objectionable as what does it add to anything?

05:35 1 It's mainly lawyer talking.

2 MS. CATES: They designated it. I think it should
3 come out.

4 MR. KELLY: I think the fact that she admits that she
05:35 5 vaguely recalls it, your Honor, that's really -- and you've
6 heard the testimony from Ms. Jones today that Ms. Rumba says,
7 "Yeah, you know what? Pete may have told me that after all."

8 And Ms. Jones has testified to that. It's in her
9 deposition. It took awhile to get her to admit it, but
05:35 10 ultimately the answer is, yeah, she vaguely remembers that.

11 MS. CATES: We haven't heard Pete testify, and I don't
12 think that is what Pete testifies to.

13 MR. KELLY: Well, I will disagree, your Honor, I think
14 this is exactly what Pete testifies to.

05:35 15 THE COURT: Well, let me read me his thing.

16 "Pete has told us in his deposition that he
17 actually did the speaking for Jamie and that Jamie sat down,
18 too distraught to speak." A bunch of objections.

19 "Mr. Kelly, does that --

05:36 20 "Okay. Do you recall that particular scene at
21 all?"

22 The answer: "Vaguely."

23 And you're saying it corroborates Ms. Jones'
24 testimony that Mr. Arroyo was her mouthpiece?

05:36 25 MR. KELLY: It does, your Honor, particularly in light

05:36 1 of the fact that the defense is going to come in and take the
2 position that Kristen Rumba says Jamie said this and they're
3 taking the position that that is the facts and that Kristen
4 Rumba remembers it distinctly and she wrote it down. And this
05:36 5 shows her memory is not so good after all and it could have
6 happened the way that I suggest.

7 MS. CATES: Quite frankly, elsewhere I think she says
8 it could have happened that way, stronger than this vaguely;
9 but this is more about mischaracterizing Pete's testimony
05:36 10 completely.

11 I mean, you have a lawyer reading into the record
12 or acting like he's reading into the record facts that are not
13 true and that nobody else in this case is going to testify
14 about. I mean, Rumba later says, "Perhaps Pete said something
05:37 15 to me"; and that's what they need, I think, for what they're
16 trying to argue. They don't need for Todd --

17 THE COURT: Your argument is it's cumulative then?

18 MS. CATES: And it's just --

19 MR. McKINNEY: It's a misstatement of the record. So,
05:37 20 all the testimony flows from a misapprehension of fact. So, to
21 vaguely recall what he describes as a scene that is
22 inaccurately described to begin with isn't evidence at all that
23 this jury could weigh one way or the other and base a
24 finding --

05:37 25 THE COURT: Well, it starts off with something that we

05:37 1 have reason to want to know, that Pete actually did the
2 speaking for Jamie and she was too distraught to speak. And it
3 ends up her saying vaguely she remembers that. I'm going to
4 allow it to stay in. I'm sorry. I'm going to allow it to stay
05:37 5 in.

6 MS. CATES: That's fine.

7 To finish out Rumba, the two other objections
8 that I wanted to discuss today were about KBR or -- I mean, not
9 KBR -- Dan Hedges or Porter & Hedges representing witnesses at
05:38 10 the grand jury. They don't mention grand jury. We've
11 specified to them. Even if it's not about the grand jury, it's
12 about representing them in general; and I think all of that
13 needs to come out.

14 MR. ESTEFAN: We agree with that, I think.

05:38 15 MR. KELLY: I think we -- actually, I don't know that
16 I necessarily agree on legal grounds; but I think we agreed to
17 do it and if it's still in there --

18 THE COURT: All right. All right.

19 MS. CATES: Even though I met you before, we've talked
05:38 20 before?

21 THE COURT: Okay. Very well.

22 MR. KELLY: We've agreed to do that.

23 MS. CATES: Thank you. I just wanted to make sure.

24 MR. KELLY: Can I have it so I can --

05:38 25 THE COURT: Okay. Back to you.

05:38 1 MS. HOLCOMBE: Yes, your Honor, I apologize.

2 On Page 40 of Anthony Adams, starting at Line 17
3 all the way through Page 43, Line 13, it's an entire discussion
4 about Anthony Adams having surgery and his mother and what his
05:38 5 mother thought. And, your Honor, we argue that this is not
6 relevant and it's very confusing and misleading to the jury
7 under 403, what Mr. Adams' past surgery has anything to do with
8 this case and the inferences or the improper inferences that
9 might arise from this.

05:39 10 THE COURT: Let me hear the other side.

11 MR. KELLY: I'm sorry, your Honor, I was still
12 grabbing these and I didn't hear the whole argument --

13 THE COURT: The issue was whether Mr. Adams' health
14 and his mother and all that has a purpose.

05:39 15 MR. KELLY: Oh, it does have a purpose, your Honor.
16 They've made the assumption or they certainly made the
17 assertion that following the administration of this drug that
18 Ms. Jones should be held to everything that she said as to
19 exactly right and so forth even though she's able to
05:39 20 communicate. And this is just an example of how coming out of
21 an anesthetic doesn't give you the same level of consciousness
22 even though you can communicate and speak with everyone just
23 fine. It --

24 MS. HOLCOMBE: I'm sorry. I didn't mean to interrupt.

05:39 25 MR. KELLY: And that's really its sole purpose, and

05:39 1 Mr. Adams gave us an example of how that's true.

2 THE COURT: Vis-a-vis his mother or himself?

3 MR. KELLY: He was the one under the anesthetic
4 speaking with his mother, who came to visit him, your Honor.

05:40 5 MS. HOLCOMBE: Your Honor, I don't think the parties
6 at least disagree on the one fact that Ms. Jones was not under
7 anesthesia in this case while she was in Iraq. Therefore, the
8 analogy to what a patient comes out of -- how they come out of
9 an anesthetic treatment is very misleading to the jury given
05:40 10 there's a disputed issue as to, one, whether she was under
11 anything -- but nobody has ever said it's been anesthesia --
12 and to compare what they're calling is Rohypnol, or whatever
13 they're calling, to anesthesia is improper and unfairly
14 prejudicial under 403. The entire line of questioning should
05:40 15 be stricken.

16 MR. KELLY: And I'm reminded that there's another
17 reason I brought that issue up; but before I hand it over to
18 Ms. Morris, actually, that's not true. And if the Court would
19 recall Dr. Scarano's testimony, he specifically testified that
05:40 20 both Rohypnol and GHB are used as anesthetics. Not only that,
21 Randall Tackett, our toxicologist, who is going to testify in
22 this case, will also tell this Court and the ladies and
23 gentlemen of the jury that these drug rape facilitation drugs
24 are, in fact, used in some places as an anesthetic.

05:41 25 THE COURT: I'll allow that. I think it doesn't help

05:41 1 either side or hurt either side. I'm going to allow it.

2 MS. HOLCOMBE: Your Honor, Page 47, Line 9 through 14,
3 it's the reference to Ms. Vorpahl representing KBR in this
4 case. We think it's unfairly prejudicial and we think that the
05:41 5 reference to that in this case is --

6 THE COURT: Representing KBR in what capacity? She
7 clearly represents them here.

8 MS. HOLCOMBE: Just the reference to it in general,
9 your Honor, to Mr. Adams is not relevant.

05:41 10 THE COURT: I'm puzzled by what the issue is. She
11 clearly -- we said repeatedly she represents KBR and not
12 Mr. Bortz and all that. But what -- what's objectionable?

13 MS. HOLCOMBE: We'll withdraw that one, your Honor.

14 THE COURT: Okay.

05:41 15 MS. HOLCOMBE: The last one, your Honor, for Anthony
16 Adams is Page 49. The objection starts at Line 5, but their
17 actual designation begins on Page 48, Line 8. And if you read
18 through, it's Mr. -- we're objecting to Mr. Kelly's statements
19 about never seeing a statement and if there's a statement, I
05:42 20 want it and I want his depo again. It's regarding a statement
21 that Mr. Adams gave to KBR security.

22 MR. KELLY: That's my statement of -- I don't think
23 statements of counsel come in. That probably -- if that's all
24 she's talking about.

05:42 25 MS. MORRIS: He's asking about -- Mr. Adams mentions

05:42 1 that he gave a statement to KBR security, which we've never
2 received. And Mr. Kelly is asking him about it.

3 THE COURT: That doesn't need to be in front of the
4 jury, though.

05:42 5 MS. HOLCOMBE: So with --

6 THE COURT: Strike.

7 MS. HOLCOMBE: So, Lines 5 through 11 would come out.
8 And that's all I have for Anthony Adams, your Honor.

9 THE COURT: We'll take up one day's witnesses at a
05:43 10 time.

11 MS. CATES: Todd and I just agreed on the rest of some
12 of them.

13 MR. MCKINNEY: I have an exhibit that I would like to
14 discuss with Ms. Jones tomorrow, your Honor.

05:43 15 THE COURT: Okay. Listen, everybody, we've got an
16 issue here.

17 MR. MCKINNEY: I'm quite sure the exhibit will draw an
18 objection. I would like to tender, pass the exhibit to the
19 Court; and you can all look on it together.

05:43 20 MR. ESTEFAN: Objection.

21 MR. MCKINNEY: I know you're going to object.

22 MR. KELLY: Just to make you happy, we're going to
23 object right now.

24 MR. MCKINNEY: Tell you what, why don't you not object
05:43 25 and make me really happy?

05:43 1 THE COURT: Plaintiff reports genital warts have
2 worsened. She reports more outbreaks and something about --
3 somebody cream.

4 MR. McKINNEY: Aldara Cream, that's a treatment.

05:43 5 THE COURT: Aldara Cream confers --

6 MR. McKINNEY: It's the next -- on down, Judge, where
7 it says, "Patient reports" -- and I've stricken out the 412
8 portion. "Patient reports she had several drinks and passed
9 out. Patient does not remember anything."

05:44 10 THE COURT: Okay. Where is that now?

11 MR. McKINNEY: That is -- it's surrounded --

12 THE COURT: Okay. She had several drinks and passed
13 out. Plaintiff does not remember anything.

14 MR. McKINNEY: "Patient does not remember anything."

05:44 15 MR. KELLY: Well, your Honor, in context, this is -- I
16 mean, there's actually a diagram of the vagina on this
17 document. In context, it's clearly violative of 412.

18 MR. McKINNEY: No. With all due respect, this is a
19 May the 17th, 2005, document after Ms. Jones has testified that
05:44 20 she contracted HPV and HSV. So, that's clearly in the case.
21 And I'm offering the document to show that two and a half
22 months or less prior to the blackout episode in Iraq, that
23 Ms. Jones reported to her doctor that she had several drinks,
24 passed out, and doesn't remember anything. And that is
05:45 25 consistent with our defense that Ms. Jones, when she drinks

05:45 1 is -- part of our defense is that, you know, Ms. Jones wasn't
2 drugged or anything like that. She had some drinks.

3 THE COURT: She blacked out?

4 MR. MCKINNEY: I don't think she blacked out. I think
05:45 5 she knew exactly what she was doing, but that's neither here
6 nor there.

7 THE COURT: I understand that.

8 MS. VORPAHL: Your Honor, I thought you ruled that
9 that entire episode came in, that we weren't required to
05:45 10 redact -- I mean, it is so similar to what happened here.

11 THE COURT: Let me hear the other side's argument.

12 MR. KELLY: Actually, your Honor, I was about to --
13 with the redaction -- I disagree with what Ms. Vorpahl says;
14 but with the redaction, I was just about to withdraw my
05:45 15 objection to it.

16 THE COURT: I don't think it's objectionable. I think
17 it comes in.

18 MR. MCKINNEY: Right. But if Ms. Vorpahl is right --
19 because I thought -- you know, I couldn't remember what the
05:45 20 Court had ruled on this, but what the -- the middle part
21 here -- and it is directly on point to our case -- is Ms. Jones
22 was reporting to her doctor that she --

23 THE COURT: I understand. It comes in.

24 MR. MCKINNEY: Well, no --

05:46 25 MS. VORPAHL: The whole thing comes in unredacted.

05:46 1 MR. MCKINNEY: The redaction, Judge, is she doesn't
2 remember whether she had intercourse. And that is directly
3 relevant to our case, of course, because it's on all fours --

4 THE COURT: Oh, you want to bring in the unredacted
05:46 5 version?

6 MR. MCKINNEY: Yes. That's what Ms. Vorpahl is
7 arguing for, and I agree with that a hundred percent.

8 MS. VORPAHL: And I thought that's what the Court had
9 previously ruled in -- and I understood that in the context of
05:46 10 the 2000 report didn't come in, the 2002 report didn't come in;
11 but this is two months before and it's exactly the same thing.

12 THE COURT: Hold on just a second.

13 MS. VORPAHL: Could we provide you with an unredacted
14 version so that you can --

05:46 15 MR. KELLY: Well, clearly --

16 THE COURT: Tell me what the unredacted statement is.

17 MS. VORPAHL: Here.

18 MR. KELLY: I don't have it in front of me, your
19 Honor.

05:47 20 MS. VORPAHL: We're going to get it. We're working on
21 getting it right now.

22 MR. KELLY: While they're looking for it, your Honor,
23 if I could point out that clearly that is an isolated view of
24 what this Court's ruling was since it's Mr. Bortz' attorney who
05:47 25 is offering this redacted version. And it's a little

05:47 1 frustrating that even when I agree, we can't agree --

2 THE COURT: I do believe that she had sex. I don't
3 think that has to do with -- I don't think that ought to come
4 in. That's just one more issue of sexual conduct that I don't
05:48 5 think is all that probative. That she passed out I think does
6 come in.

7 MR. MCKINNEY: Actually, what the record says is she
8 can't remember if she had sex. It's not a question of -- well,
9 she says --

05:48 10 THE COURT: Hand it to Mrs. Loewe, please.

11 MS. VORPAHL: This way.

12 MR. MCKINNEY: I'm sorry. And there's yet another
13 reason once the Court is finished reading.

14 THE COURT: Well --

05:49 15 MR. MCKINNEY: One more before the Court because this
16 is important. The centerpiece of Ms. Jones' case is that even
17 though she doesn't remember anything, she knows she did not
18 consent.

19 THE COURT: All right.

05:49 20 MR. MCKINNEY: Here we have a grammatically similar
21 incident in which she's with a new boyfriend -- a new partner
22 and it's possible sexual intercourse but she doesn't remember
23 anything. Now, that is directly on point to our fact pattern
24 here and totally in line with our defense of consent. And it's
05:50 25 not a huge parading of her entire sex life.

05:50

1 THE COURT: This is dated, what, 6-1-04?

2 THE WITNESS: It's 5-17-05, your Honor.

3 THE COURT: I can't read the date. We've got 5-17-04?

4 MS. VORPAHL: '05.

05:50

5 MR. McKINNEY: '05.

6 THE COURT: '05.

7 MS. VORPAHL: Just two months prior to --

8 MR. KELLY: Your Honor, there's a couple of things.

9 First of all, by its own verbiage, this is voluntary

05:50

10 intoxication and there is no claim of assault. There is no
11 claim of anything involuntary sexual going on here. This is
12 simply a violation of the 412 ruling.

13 What's more is I've already taken Ms. Jones on
14 direct. To allow it in now, after clearly counsel for both
15 sides, by the redacted version that was offered, understood the
16 Court's ruling to be that this didn't come in, to allow it now
17 is extremely prejudicial since I wasn't going into it on direct
18 as a result of the Court's prior ruling, as at least two of the
19 three counsel in the room understood.

05:51

20 MR. McKINNEY: That is not correct. I didn't know
21 whether the Court had ruled or not. And I'm simply offering a
22 cleaned-up version, but Ms. Vorpahl told me before I ever made
23 this offer that she didn't think that you had ruled. And quite
24 frankly, now that my head has cleared a little bit and I've
25 thought more about -- it's hard to remember everything I hear

05:51

05:51 1 from a witness on the witness stand at the end of the day
2 because I'm old and tired.

3 But this is -- well, I've said it. She -- it's
4 on all fours with the facts of our defense. It's very close in
05:51 5 time. There's no reason why it can't be covered on redirect.
6 There's no prejudice there. And it's not parading her entire
7 sex life for the jury as is complained by 412. It's a single
8 reference to something directly on point in this case. The
9 probative value here does substantially outweigh the prejudice
05:52 10 because the prejudice is minimal.

11 THE COURT: Okay. Let's go back to the first
12 principle. Rule 412 makes inadmissible alleged sexual
13 misconduct unless evidence is offered to prove that any alleged
14 victim engaged in other sexual behavior -- no, excuse me --
05:52 15 unless it's offered to prove the sexual behavior or sexual
16 predisposition -- its probative value substantially outweighs
17 the danger of harm to any victim and of unfair prejudice to any
18 party.

19 Okay. So, what -- it's defendants' burden to
05:53 20 show not just that it meets the 403 test but it substantially
21 outweighs the danger of harm to any victim and of unfair
22 prejudice to any party. Now, why does this substantially
23 outweigh what would obviously be a lot of prejudice to
24 Ms. Jones?

05:53 25 MR. MCKINNEY: Well, the prejudice is not you had sex

05:53 1 with somebody. That's not the prejudice that we're talking
2 about.

3 THE COURT: That's the prejudice I'm worried about,
4 that she -- sounds like she had somewhat maybe anonymous sex
05:53 5 with somebody who was brand new.

6 MR. McKINNEY: Which is exactly what happened in our
7 case here.

8 THE COURT: Well, but that's exactly what 412 is
9 aiming at, too. It generally does not want evidence of a
05:53 10 woman's sexual history --

11 MR. McKINNEY: Except -- it's not just that she had a
12 casual encounter. It's --

13 THE COURT: It's the blackout, I know that.

14 MR. McKINNEY: -- the blackout, it's the new partner,
05:54 15 it's the "I can't recall that I had intercourse," and it's not
16 a big deal in May of 2005. But in July of 2005, the fact that
17 she can't remember -- the very fact that she can't remember is
18 what she hangs her hat on, may it please the Court, to show
19 that it was not consensual. The Court heard her deposition
05:54 20 testimony when I would ask her time and time again, how does
21 she -- if she can't remember, how does she know that she did
22 not --

23 THE COURT: That's not what she's saying here. She
24 says, "Patient reports possible sexual intercourse, new
05:54 25 partner."

05:54 1 MR. MCKINNEY: Yes. So, it isn't even actual sexual
2 intercourse. But the point I'm making is, Judge, she said --
3 and she has said it in this trial and said it repeatedly in her
4 deposition --

05:54 5 THE COURT: No. I see its probative value and also
6 see its prejudicial value. That's why I'm looking for some
7 help here.

8 MR. MCKINNEY: Well, the reason why it substantially
9 outweighs or has sufficiently substantial --

05:55 10 THE COURT: Outweighs.

11 MR. MCKINNEY: -- greater weight is because of its
12 proximity in time and its remarkable similarity to the facts of
13 this case. It is not a casual encounter. It does not involve
14 a blackout. It's not anything like that. We're not showing --
05:55 15 I promise this is not a promiscuity defense. It is clearly,
16 however, a remarkably similar event.

17 MS. VORPAHL: And the rule says that the standard is
18 that the probative value must substantially outweigh the danger
19 of harm to the victim and unfair prejudice. And I submit to
05:55 20 you, your Honor, while this may be prejudicial to her, it is
21 not unfairly prejudicial --

22 MR. MCKINNEY: Excellent point.

23 MS. VORPAHL: -- to point out that this very same
24 thing happened to her two months earlier.

05:55 25 THE COURT: I'll reserve ruling. Thank you.

1 *(End of requested proceedings)*

2 * * * * *

3 COURT REPORTER'S CERTIFICATION

4 I certify that the foregoing is a correct transcript from
5 the record of proceedings in the above-entitled cause.

6 Date: June 20, 2011

7
8 /s/ Cheryll K. Barron

9 Cheryll K. Barron, CSR, CMR, FCRR
10 Official Court Reporter
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| Case 4:07-cv-02719 Document 305 Filed 12/27/11 Page 284 of 335 | | | 1 |
| '05 [3] 279/4 279/5 279/6 | 14 [3] 267/6 267/20 273/2 | 287 [1] 127/12 | 28th [5] 203/14 211/21 218/2 |
| 'Hey [1] 136/11 | 15 [4] 77/1 158/14 231/25 | 28th [5] 203/14 211/21 218/2 | |
| 'I'm [1] 27/11 | 238/21 | 221/19 225/20 | 29 [2] 92/17 250/20 |
| 'My [1] 77/24 | 1500 hours [1] 78/15 | 29 [2] 92/17 250/20 | |
| 'oh [1] 236/12 | 1613 [2] 18/1 18/3 | 296 [1] 126/12 | 29th [1] 32/7 |
| 'There's [1] 27/9 | 1614 [1] 18/12 | 29th [1] 32/7 | |
| . | 164 [2] 241/3 241/12 | 2:00-something [1] 252/11 | 2:31 [1] 164/14 |
| . | 168 [1] 35/6 | 2:31 [1] 164/14 | |
| .259 [1] 89/12 | 17 [2] 40/1 271/2 | 2:46 [1] 164/14 | 2nd [2] 189/22 191/21 |
| / | 17th [1] 275/19 | 2:46 [1] 164/14 | |
| /s [1] 283/8 | 18 [1] 150/25 | 2nd [2] 189/22 191/21 | 3 |
| 0 | 18-year-old [2] 144/4 144/10 | 3 | |
| 000 [1] 76/2 | 18th [1] 109/22 | 30 [6] 5/24 27/18 218/10 | 30,000 [1] 70/17 |
| 000035 [2] 15/22 15/23 | 19 [2] 144/8 150/11 | 218/16 218/19 219/3 | |
| 000974 [1] 91/15 | 19-year-old [1] 149/5 | 30th [2] 237/22 238/15 | 31st [3] 238/24 239/1 239/4 |
| 001613 [1] 17/25 | 191 [1] 165/18 | 30th [2] 237/22 238/15 | |
| 002781 [1] 48/9 | 19382 [1] 1/22 | 31st [3] 238/24 239/1 239/4 | 336 [1] 114/5 |
| 0048 [1] 207/1 | 1984 [1] 172/10 | 336 [1] 114/5 | |
| 00960 [1] 176/5 | 1:16 p.m [1] 136/19 | 36th [1] 2/6 | 3:00 o'clock [2] 78/18 78/24 |
| 02 [2] 97/5 97/5 | 1st [1] 128/16 | 3:00 o'clock [2] 78/18 78/24 | |
| 04 [2] 279/1 279/3 | 2 | 4 | 4-11-07 [1] 96/4 |
| 05 [1] 279/2 | 20 [12] 1/5 10/22 77/2 | 4-11-07 [1] 96/4 | |
| 07 [1] 96/4 | 126/19 142/6 181/25 182/5 | 4-13 and [1] 97/5 | 4-18-02 [2] 97/5 97/5 |
| 0948 [1] 201/7 | 183/14 214/5 266/5 267/6 | 4-18-02 [2] 97/5 97/5 | |
| 1 | 283/6 | 40 [1] 271/2 | 401 [1] 59/19 |
| 10 [13] 49/10 172/3 172/3 | 200 [1] 40/18 | 40 [1] 271/2 | |
| 209/7 218/10 218/16 218/19 | 2000 [2] 85/22 277/10 | 401 [1] 59/19 | 403 [8] 9/6 60/1 255/15 |
| 219/3 227/25 228/1 237/17 | 2002 [3] 39/21 110/5 277/10 | 403 [8] 9/6 60/1 255/15 | |
| 247/4 262/6 | 2004 [22] 119/12 119/20 120/1 | 255/16 257/14 271/7 272/14 | 280/20 |
| 10 feet [1] 10/7 | 120/3 120/6 120/7 120/15 | 257/17 279/12 280/7 280/12 | |
| 10-minute [2] 58/21 222/19 | 122/1 122/16 127/4 130/22 | 281/8 | 43 [2] 10/18 271/3 |
| 1000 [1] 2/6 | 131/12 131/13 132/21 143/24 | 43 [2] 10/18 271/3 | |
| 102 [4] 40/13 108/13 108/20 | 144/1 145/2 145/18 149/3 | 47 [1] 273/2 | 48 [2] 204/10 273/17 |
| 115/17 | 149/20 165/20 172/11 | 47 [1] 273/2 | |
| 103 [3] 26/1 26/5 225/10 | 2005 [24] 35/13 43/25 119/3 | 48 [2] 204/10 273/17 | 49 [1] 273/16 |
| 105 [9] 14/8 14/9 14/23 | 119/5 120/13 128/16 132/1 | 49 [1] 273/16 | |
| 14/25 14/25 15/1 15/4 184/25 | 136/6 136/19 137/21 139/9 | 4:21 [1] 222/21 | 4:31 [1] 222/21 |
| 185/1 | 154/23 155/8 166/3 168/11 | 4:21 [1] 222/21 | |
| 106 [1] 49/24 | 177/7 189/22 190/5 190/22 | 5 | 5 percent [1] 70/20 |
| 109 [1] 154/14 | 191/21 203/14 275/19 281/16 | 5 | |
| 10:00 o'clock [2] 182/14 | 281/16 | 5-17-04 [1] 279/3 | 5-17-05 [1] 279/2 |
| 184/1 | 2006 [1] 41/24 | 5-17-04 [1] 279/3 | |
| 10:00 p.m [1] 185/14 | 2007 [5] 77/17 83/2 85/24 | 5-17-05 [1] 279/2 | 500 [1] 2/11 |
| 10:23 [1] 58/24 | 96/15 97/8 | 500 [1] 2/11 | |
| 10:31 p.m [1] 155/16 | 2011 [3] 1/5 145/19 283/6 | 501 [1] 45/14 | 515 [1] 2/14 |
| 10:33 [1] 58/24 | 2028 [1] 77/17 | 501 [1] 45/14 | |
| 10th [1] 133/7 | 20th [1] 133/10 | 515 [1] 2/14 | 52 [10] 10/11 10/19 176/3 |
| 11 [3] 39/21 209/7 274/7 | 21 [3] 43/19 266/2 267/6 | 52 [10] 10/11 10/19 176/3 | |
| 11 days [1] 177/8 | 219 [2] 82/4 82/17 | 176/4 181/13 181/15 181/15 | 183/10 188/10 188/13 |
| 110 [1] 154/14 | 21st [1] 168/11 | 183/10 188/10 188/13 | |
| 112 [3] 12/5 12/6 12/8 | 22 [6] 10/23 10/25 11/2 | 55 [3] 24/4 24/5 26/4 | 56 [3] 230/21 231/2 231/6 |
| 112 degrees [1] 19/25 | 182/6 183/14 266/5 | 56 [3] 230/21 231/2 231/6 | |
| 1150 [2] 1/16 1/19 | 22-year-old [4] 84/3 84/14 | 57 [1] 230/23 | 5:00 [1] 222/18 |
| 11:00 o'clock [1] 245/13 | 85/20 182/13 | 5:00 [1] 222/18 | |
| 11:55 [1] 100/24 | 221 [1] 85/3 | 5:00 o'clock [1] 222/18 | 5A [3] 48/10 48/11 50/15 |
| 11th [1] 96/15 | 225 [4] 95/25 100/9 100/14 | 5A [3] 48/10 48/11 50/15 | |
| 12 [1] 23/17 | 100/19 | 5th [5] 43/22 43/25 44/8 | 136/19 137/20 |
| 124 [1] 37/6 | 226 [2] 96/24 100/9 | 136/19 137/20 | |
| 12:36 [1] 100/24 | 23rd [1] 35/13 | 6 | 6-1-04 [1] 279/1 |
| 12:45 [1] 99/9 | 25 [2] 142/6 267/20 | 6-1-04 [1] 279/1 | |
| 12:58 p.m [1] 250/19 | 250 [1] 168/3 | 608 [1] 257/16 | 67 [1] 201/15 |
| 13 [1] 271/3 | 251 [2] 168/3 168/7 | 67 [1] 201/15 | |
| 130 [1] 17/24 | 255 [2] 65/7 65/8 | 69 [3] 189/1 196/6 200/1 | 6:00 [1] 42/12 |
| 133 [2] 228/23 241/14 | 25th [3] 144/1 145/2 145/3 | 6:00 [1] 42/12 | |
| 137 [3] 48/8 51/22 51/22 | 26 [1] 185/10 | 6:30 [1] 185/18 | 6:38 [1] 230/2 |
| 13th [6] 97/8 155/8 168/24 | 266-9206 [1] 229/11 | 6:30 [1] 185/18 | |
| 169/19 169/23 170/2 | 27 [3] 1/22 190/22 267/20 | 6:41 [1] 230/2 | 6:45 [1] 230/2 |
| | 2719 [1] 1/4 | 6:41 [1] 230/2 | |
| | 27th [1] 190/5 | 6th [1] 177/7 | 7 |
| | 28 [1] 250/20 | 7 | |
| | 286 [2] 126/15 126/19 | 7-28 [1] 250/20 | |

| 7 Case 4:07-cv-02719 Document 305 Filed 11/24/11 Page 285 of 335 | |
|--|---|
| 7-29 [1] 250/20 | 60/10 60/10 61/24 63/3 63/17 63/17 63/21 66/15 69/18 |
| 72 [2] 204/14 204/15 | 69/23 70/9 72/4 72/14 74/14 |
| 77002 [2] 2/7 2/15 | 74/20 75/1 76/13 77/17 78/18 |
| 77056 [3] 1/17 1/20 2/11 | 78/23 78/24 82/9 86/13 86/13 |
| 772 [1] 77/19 | 87/8 88/6 90/14 92/22 94/13 |
| 78 [5] 56/13 56/14 59/15 | 96/18 97/3 99/1 99/7 101/3 |
| 59/16 59/18 | 102/1 103/11 104/6 104/9 |
| 790 [1] 229/11 | 104/16 106/17 111/14 112/16 |
| 7:19 [1] 231/8 | 112/22 113/5 114/8 114/21 |
| 7:19 a.m [1] 231/13 | 115/21 116/18 118/4 118/6 |
| 7:21 [1] 228/11 | 118/9 119/11 121/7 121/19 |
| 7:36 [1] 231/25 | 122/4 122/5 123/14 127/13 |
| 7:43 [1] 234/10 | 127/13 128/14 129/10 130/8 |
| 7:52 a.m [1] 236/7 | 130/14 130/19 130/19 132/13 |
| 7:54 a.m [1] 236/14 | 133/3 134/6 134/10 134/12 |
| 7:59 [1] 24/10 | 134/13 137/3 137/6 138/15 |
| 8 | 138/16 138/17 139/19 141/22 |
| 8-ounce [1] 208/14 | 142/2 142/2 145/5 146/10 |
| 801 [1] 164/7 | 147/2 147/17 147/24 148/17 |
| 803 [6] 158/21 159/15 160/19 | 148/22 149/6 149/21 150/1 |
| 161/16 161/22 163/23 | 150/2 150/6 151/4 151/8 |
| 807 [1] 163/9 | 152/2 152/4 152/10 152/14 |
| 81 [1] 88/17 | 153/25 155/18 155/25 157/25 |
| 82 [2] 75/19 76/10 | 160/7 161/18 163/17 164/21 |
| 83 [3] 91/5 91/15 92/1 | 168/19 173/1 176/19 177/3 |
| 84 [3] 90/6 92/1 262/6 | 177/7 177/8 177/17 179/3 |
| 86 [1] 262/6 | 180/1 180/2 180/4 180/5 |
| 878 [3] 76/5 76/10 77/4 | 180/7 180/11 180/13 182/12 |
| 879 [1] 76/20 | 182/18 183/2 185/16 188/21 |
| 8:00 o'clock [3] 78/21 78/24 | 190/11 191/18 191/22 192/17 |
| 252/21 | 192/23 193/6 196/8 198/7 |
| 8:00 p.m [1] 85/22 | 199/14 199/15 199/17 200/3 |
| 8:00-something [2] 252/11 | 200/4 201/5 204/14 206/19 |
| 252/12 | 207/7 207/11 208/9 208/22 |
| 8:30 [1] 240/9 | 209/7 209/21 210/16 211/1 |
| 8:38 [1] 1/5 | 215/5 217/17 219/23 220/5 |
| 8th [1] 83/2 | 220/17 220/18 220/21 221/10 |
| 9 | 223/8 224/10 224/12 227/24 |
| 91 [2] 34/23 35/3 | 228/3 228/17 231/5 231/25 |
| 9206 [1] 229/11 | 234/25 239/8 240/13 241/23 |
| 98 [2] 176/5 176/5 | 241/25 248/24 249/12 251/2 |
| 9:00 o'clock [1] 27/1 | 252/10 252/11 252/11 254/22 |
| 9:09 [1] 22/23 | 255/5 255/10 255/24 256/4 |
| 9:21 [1] 22/23 | 256/7 256/15 256/18 256/19 |
| 9:40 [1] 102/6 | 257/3 257/3 257/19 257/20 |
| A | 258/7 258/10 258/21 258/24 |
| a.m [9] 1/5 22/23 22/23 | 259/6 259/15 259/18 260/13 |
| 58/24 58/24 100/24 231/13 | 260/14 262/6 262/10 263/11 |
| 236/7 236/14 | 267/2 267/3 269/9 269/14 |
| a/k/a [1] 77/23 | 270/8 270/11 270/12 271/4 |
| abandoning [1] 102/16 | 273/19 273/24 273/25 274/2 |
| Abigail [2] 41/18 55/18 | 275/2 276/12 276/14 279/25 |
| ability [1] 115/5 | 281/2 281/3 |
| able [15] 23/11 55/4 55/9 | above [4] 117/11 130/18 136/8 |
| 55/13 78/9 79/25 90/24 | 283/4 |
| 121/23 151/23 153/7 209/9 | above-entitled [1] 283/4 |
| 245/5 256/21 258/1 271/19 | above-mentioned [1] 117/11 |
| about [266] 6/14 9/9 10/4 | abrasions [2] 16/3 16/4 |
| 11/15 11/25 12/10 13/17 | abscess [1] 131/3 |
| 16/11 17/2 18/9 19/13 19/14 | absolute [1] 101/17 |
| 21/3 21/17 23/7 23/9 25/11 | absolutely [11] 5/19 38/13 |
| 25/12 25/18 28/5 28/12 31/8 | 41/13 55/24 58/15 61/15 |
| 31/8 31/24 32/5 33/23 34/21 | 70/14 99/25 134/17 179/16 |
| 36/15 39/1 40/6 41/15 41/23 | 228/14 |
| 43/1 45/11 46/7 46/11 47/14 | abstaining [1] 142/25 |
| 52/8 53/11 53/13 55/1 55/18 | accepted [2] 5/14 185/15 |
| 55/18 56/17 58/13 58/14 | access [2] 154/3 239/13 |
| | accident [4] 53/16 162/19 |
| | 230/7 233/19 |
| | accidentally [2] 229/16 |
| | 229/20 |
| | accordance [1] 243/7 |
| | according [12] 99/17 112/20 |
| | 123/12 128/14 188/1 188/9 |
| | 190/20 208/18 212/19 221/19 |
| | 226/15 246/17 |
| | account [6] 17/5 171/11 177/6 |
| | 195/24 200/23 245/23 |
| | accountable [1] 88/3 |
| | accounts [1] 89/5 |
| | accuracy [1] 126/2 |
| | accurate [2] 190/16 193/10 |
| | accurately [2] 99/2 190/13 |
| | accuse [2] 113/18 113/19 |
| | accused [3] 76/23 235/7 256/8 |
| | accusing [2] 223/15 235/14 |
| | acoustics [1] 91/12 |
| | Act [1] 131/21 |
| | acting [4] 80/2 80/3 117/23 |
| | 269/12 |
| | action [3] 6/10 160/11 266/13 |
| | actions [2] 6/11 266/21 |
| | active [1] 143/1 |
| | activities [4] 101/19 165/2 |
| | 204/7 261/1 |
| | activity [13] 125/1 127/16 |
| | 127/20 128/4 165/6 165/8 |
| | 165/23 166/2 167/10 167/19 |
| | 239/12 248/25 249/2 |
| | actual [12] 108/6 118/7 118/8 |
| | 126/11 127/12 130/15 133/19 |
| | 134/22 159/12 171/25 273/17 |
| | 282/1 |
| | actually [84] 34/14 40/16 |
| | 42/3 46/18 46/22 47/21 59/17 |
| | 67/10 67/12 67/19 73/2 76/20 |
| | 77/9 87/10 88/5 88/15 89/16 |
| | 94/9 95/20 97/18 98/11 98/25 |
| | 102/2 102/6 106/7 108/15 |
| | 111/12 111/15 112/19 114/21 |
| | 117/21 120/12 122/5 124/9 |
| | 126/5 128/23 129/14 136/20 |
| | 137/19 138/5 144/8 144/18 |
| | 145/15 146/23 147/11 151/7 |
| | 152/7 152/24 155/23 166/20 |
| | 169/12 170/3 171/18 173/23 |
| | 175/21 176/4 182/8 184/10 |
| | 184/22 185/8 187/21 192/4 |
| | 198/8 204/14 207/17 208/13 |
| | 208/24 209/9 221/9 228/25 |
| | 231/9 243/11 243/13 251/1 |
| | 251/8 255/4 257/7 268/17 |
| | 270/1 270/15 272/18 275/16 |
| | 276/12 278/7 |
| | adamantly [1] 109/4 |
| | Adams [14] 173/12 263/5 263/9 |
| | 263/10 265/23 267/7 271/2 |
| | 271/4 272/1 273/9 273/16 |
| | 273/21 273/25 274/8 |
| | Adams' [2] 271/7 271/13 |
| | add [6] 70/11 194/1 243/8 |
| | 244/17 244/19 267/25 |
| | added [2] 244/8 246/11 |
| | addition [5] 40/15 105/18 |
| | 113/8 116/7 158/22 |
| | additional [5] 29/8 38/12 |
| | 170/10 170/11 239/7 |
| | Additionally [1] 238/11 |
| | additions [2] 242/23 246/20 |
| | address [5] 6/19 136/6 161/20 |
| | 162/1 254/19 |
| | administration [2] 45/9 |
| | 271/17 |

administrative [1] 51/9
administrator [2] 50/16 51/3
administrators [2] 50/17 51/4
admins [1] 153/8
admissibility [1] 69/25
admissible [5] 69/13 101/20
 103/12 160/18 223/23
admission [15] 39/18 107/8
 119/11 129/23 130/3 135/12
 154/18 154/25 168/2 202/1
 202/12 230/20 241/3 241/12
 241/13
admit [2] 143/7 268/9
admits [1] 268/4
admitted [16] 9/6 14/19 65/14
 100/13 126/21 130/1 130/6
 143/17 155/4 162/8 168/5
 183/12 189/16 192/16 206/24
 231/1
adults [1] 118/3
advance [1] 101/5
adversaries [2] 244/11 244/14
adversary [2] 39/3 39/6
advice [2] 28/15 69/15
advising [1] 263/24
affair [1] 113/17
affairs [1] 160/12
affects [2] 7/20 46/9
affirmative [1] 190/25
Afghanistan [2] 264/6 264/7
afraid [4] 63/10 63/10 148/8
 254/17
African [1] 173/18
African-American [1] 173/18
after [79] 6/17 6/22 12/2
 13/4 16/14 17/19 21/16 21/25
 24/18 24/21 25/14 27/12
 29/15 29/22 31/10 31/12
 31/15 35/15 41/18 44/9 45/1
 51/25 52/1 57/21 58/6 73/19
 79/9 97/8 113/5 119/4 119/24
 120/13 120/20 122/19 122/23
 124/3 128/22 138/22 145/4
 147/23 148/23 153/16 158/8
 159/7 163/12 167/15 177/8
 177/8 180/23 182/19 186/20
 188/1 193/20 195/21 211/5
 211/15 211/22 214/23 218/3
 218/11 218/11 219/4 220/23
 220/25 221/23 230/4 234/5
 245/8 249/23 251/9 252/21
 252/25 253/2 261/8 263/15
 268/7 269/5 275/19 279/14
aftermath [1] 151/24
afternoon [5] 78/18 158/10
 164/24 227/17 252/11
afterwards [2] 161/25 188/22
again [46] 4/16 4/25 21/19
 24/19 32/1 52/17 56/21 79/19
 84/5 85/18 86/11 86/17
 104/19 113/24 117/20 120/23
 124/22 128/13 139/22 142/4
 144/25 150/18 159/24 160/15
 161/3 170/6 171/15 174/2
 174/3 181/16 184/6 185/22
 188/13 196/6 197/24 198/20
 217/13 218/25 219/5 237/22
 246/12 246/16 261/10 264/10
 273/20 281/20
against [12] 22/7 57/17 58/5

64/22-65/2 71/22 84/16 94/23
 103/20 164/1 251/15 268/21
age [6] 6/16 11/4 55/6 138/1
 142/5 144/5
agent [53] 31/4 33/13 35/10
 92/18 191/13 191/16 192/9
 194/8 198/9 204/25 205/5
 207/11 207/12 207/19 207/21
 207/22 207/24 208/19 209/18
 209/21 209/24 210/4 210/9
 210/11 210/12 213/3 213/16
 214/6 214/11 214/12 215/1
 215/7 215/17 215/18 218/4
 218/10 218/14 218/16 218/19
 219/22 220/1 220/5 220/13
 220/15 221/4 221/19 221/22
 227/15 227/15 238/24 239/4
 239/6 239/9
agent's [3] 177/12 197/21
 210/22
agents [10] 31/15 208/7
 209/16 212/3 212/4 236/2
 238/6 249/17 251/9 251/10
agents' [1] 197/5
aggressor's [1] 105/20
ago [18] 39/21 39/22 40/1
 67/3 67/4 67/5 67/16 67/16
 111/2 113/8 121/7 125/11
 141/19 142/6 226/9 229/19
 242/16 261/20
agree [27] 14/18 47/19 81/21
 86/20 105/10 105/20 108/11
 113/10 115/17 134/14 134/18
 183/18 186/6 209/11 215/10
 215/12 218/1 226/14 227/13
 252/5 252/16 252/17 270/14
 270/16 277/7 278/1 278/1
agreed [8] 34/16 100/20 208/8
 208/9 264/6 270/16 270/22
 274/11
agreeing [1] 103/5
agreement [3] 47/12 47/19
 48/6
ahead [10] 59/24 69/1 114/25
 121/16 197/13 197/13 197/15
 197/18 230/14 267/5
aid [1] 219/16
aided [1] 1/24
AIDS [3] 147/9 148/8 151/18
aiming [1] 281/9
airman [5] 79/3 79/5 79/6
 79/6 80/11
airport [1] 258/7
alarming [3] 109/18 151/14
 213/2
alcohol [7] 17/5 84/21 89/12
 182/16 182/17 184/5 208/16
alcoholic [2] 113/7 113/20
Aldara [2] 275/4 275/5
all [282] 4/3 4/4 5/10 5/11
 5/21 6/1 6/18 9/6 11/18
 12/20 14/22 16/11 17/10
 17/16 17/18 21/18 22/22 23/1
 28/11 31/19 33/10 34/22
 37/18 37/18 39/10 41/22 46/5
 52/4 52/13 52/17 55/22 56/12
 57/2 57/4 57/5 58/23 62/1
 64/4 64/16 65/3 65/13 67/2
 67/5 68/25 71/1 71/1 71/5
 71/11 75/6 75/25 77/12 80/2
 80/6 80/16 82/19 84/4 85/12
 87/3 87/8 88/11 89/14 93/25

94/7 84/10 94/16 95/12 95/17
 96/15 96/24 98/3 99/6 99/10
 100/21 100/23 101/5 103/12
 103/13 106/14 106/23 107/24
 108/4 108/9 108/21 110/10
 110/25 111/22 112/13 113/5
 113/21 114/20 116/24 117/2
 118/3 118/13 119/5 119/9
 119/14 120/20 121/5 121/14
 122/12 123/9 123/13 124/19
 126/12 127/22 128/18 128/21
 129/2 129/7 132/5 132/6
 132/10 132/20 133/3 134/1
 135/1 136/14 136/23 138/5
 138/11 138/14 138/22 139/14
 140/3 141/9 141/15 141/24
 142/20 144/13 144/21 145/8
 145/18 145/22 146/19 148/13
 150/13 150/24 151/15 152/6
 152/13 153/6 154/13 155/18
 156/9 158/14 158/14 159/19
 160/21 165/12 166/1 168/23
 169/18 170/5 170/12 171/1
 171/5 171/15 171/22 172/2
 172/16 173/2 173/20 174/13
 176/14 178/10 178/21 179/8
 180/23 181/3 181/7 182/2
 182/4 182/25 183/7 183/22
 186/25 189/16 192/13 200/12
 204/24 205/8 206/6 207/4
 208/7 210/2 211/7 212/10
 212/15 214/6 216/10 216/10
 216/13 216/18 216/24 217/4
 218/21 220/21 220/23 222/10
 224/4 224/7 225/6 225/20
 225/25 226/11 226/23 227/5
 227/8 228/22 232/17 232/19
 232/22 232/24 233/12 233/22
 235/11 235/17 238/19 238/21
 239/18 240/8 240/10 240/10
 240/21 241/21 242/9 242/13
 242/13 242/13 245/10 245/17
 246/2 246/2 246/12 247/6
 252/3 252/9 254/6 254/8
 254/11 256/6 258/1 258/18
 258/20 258/24 259/25 261/3
 261/14 261/16 261/19 262/3
 262/13 262/20 263/11 263/14
 263/23 264/1 265/11 265/17
 266/20 266/22 268/7 268/21
 269/5 269/20 269/22 270/12
 270/18 270/18 271/3 271/14
 273/12 273/23 274/8 274/19
 275/18 277/3 278/5 278/19
 279/9 280/4
allegation [2] 105/12 110/20
allegations [9] 90/7 94/23
 94/24 95/7 95/8 177/1 177/9
 182/9 193/22
alleged [10] 161/19 161/21
 185/11 185/16 185/19 185/23
 186/2 186/8 280/12 280/13
allegedly [1] 190/6
allergic [1] 182/25
allergies [1] 183/3
alley [9] 76/18 77/20 79/7
 79/23 86/7 97/9 98/9 99/4
 163/13
allow [17] 7/3 62/12 69/11
 192/16 192/17 247/15 247/16
 254/17 258/25 265/16 266/23
 270/4 270/4 272/25 273/1

| A Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 287 of 335 | | |
|--|--|--|
| allow... [2] 279/14 279/16 | 272/9-272/24 anesthetics [1] 272/20 | 104/23 108/24 116/23 148/17 175/18 198/15 182/11 182/19 |
| allowed [11] 47/14 103/20 162/11 185/15 196/17 247/8 247/12 253/8 256/2 256/16 261/17 | anger [1] 4/23 angered [2] 35/22 86/18 angry [4] 35/21 77/25 86/2 87/9 anonymous [1] 281/4 | 188/22 192/23 219/21 221/2 223/8 244/15 244/18 244/20 246/8 247/6 247/13 248/24 260/3 265/20 267/2 267/25 271/7 272/11 275/9 275/13 275/14 275/24 276/2 278/17 278/23 279/11 282/14 |
| allows [3] 52/24 131/21 242/7 | another [28] 21/7 22/9 34/15 37/4 38/18 39/8 63/9 70/17 70/19 82/4 88/16 104/9 112/24 115/20 132/20 144/6 152/8 152/8 157/13 163/3 180/13 185/18 187/19 209/8 215/3 216/16 272/16 278/12 | anything, [1] 27/10 anyway [3] 104/10 204/24 237/3 anyways' [1] 136/13 anywhere [1] 27/18 |
| almost [1] 227/7 | answer [20] 42/13 69/17 83/13 104/3 127/12 127/17 127/21 148/12 152/4 152/5 160/22 165/21 165/25 198/23 203/21 243/9 248/24 264/24 268/10 268/22 | AP [1] 182/23 apart [4] 97/23 98/5 98/10 99/5 apartment [5] 41/21 41/25 137/12 149/19 150/11 |
| alone [3] 20/9 24/13 61/6 | answered [1] 227/2 answering [2] 136/12 136/14 | apologies [3] 15/2 49/8 59/5 apologize [8] 14/13 15/16 36/21 42/11 74/11 77/11 210/21 271/1 |
| along [5] 40/2 164/13 184/11 254/8 254/12 | answers [5] 19/11 45/3 149/9 245/2 245/3 Anthony [9] 173/12 263/5 263/9 263/10 265/23 271/2 271/4 273/15 274/8 | appalled [1] 58/11 apparent [1] 82/10 apparently [20] 59/4 65/2 91/1 91/9 95/6 96/20 113/22 114/10 139/8 183/2 187/1 188/16 203/25 204/13 209/24 212/19 221/2 221/21 238/18 241/23 |
| already [18] 62/20 63/1 69/3 74/15 112/11 126/20 182/15 184/4 201/18 209/21 233/4 234/5 236/15 242/9 245/7 258/5 258/22 279/13 | anxiety [4] 41/4 97/12 98/6 98/21 any [111] 4/24 6/4 6/10 9/13 10/12 12/21 13/7 25/13 31/8 33/15 33/25 34/12 39/10 42/8 44/13 46/19 46/20 48/16 50/7 50/16 50/17 50/19 51/3 51/3 51/4 51/6 51/8 51/11 51/13 51/18 51/19 53/24 54/2 54/8 54/11 54/14 60/25 64/16 64/20 75/2 75/22 81/13 87/3 87/19 89/7 89/7 93/16 97/3 100/2 100/6 100/10 103/17 103/19 104/20 104/23 109/5 121/15 136/20 146/16 148/22 152/1 152/3 155/2 159/11 159/12 160/10 173/22 178/1 179/6 181/24 184/10 189/11 190/13 190/14 192/10 202/14 202/17 202/20 202/24 206/6 212/13 214/6 214/17 218/22 219/12 224/15 224/25 228/6 232/13 234/7 234/13 234/20 234/25 236/20 239/12 242/18 242/21 243/15 244/19 246/6 248/2 252/8 255/25 260/14 266/19 267/8 280/13 280/17 280/17 280/21 280/22 | appeal [1] 52/11 appear [7] 81/13 81/20 94/21 94/24 98/17 101/13 183/23 appeared [7] 89/8 90/1 96/17 198/5 198/5 199/12 199/12 appearing [1] 69/13 appears [12] 6/8 82/2 98/19 104/2 135/5 136/4 168/10 171/3 171/4 183/21 185/22 219/2 appended [1] 51/1 appointment [1] 149/23 appreciate [2] 91/25 111/6 apprehension [1] 139/15 approach [15] 45/24 46/3 46/13 66/24 66/25 74/6 74/13 91/17 105/9 126/16 167/2 170/18 176/7 176/13 256/11 |
| also [63] 6/19 6/21 6/25 29/10 29/12 40/25 59/25 70/17 72/8 73/11 86/2 88/5 88/11 90/2 100/15 117/6 120/17 126/8 127/24 128/6 130/2 130/5 140/9 144/21 144/25 147/22 152/13 153/2 166/18 168/17 172/2 175/9 177/19 181/7 181/9 184/24 197/23 198/10 210/4 210/8 212/19 213/4 213/10 213/24 214/4 217/22 220/13 221/4 230/23 230/25 237/2 242/23 246/17 255/5 258/3 258/11 259/11 259/15 261/5 263/7 266/15 272/22 282/5 | antibiotics [1] 182/25 | appropriate [4] 4/11 68/3 68/4 143/1 appropriately [1] 261/4 approximately [3] 85/22 204/10 218/10 |
| altercation [3] 78/21 79/13 99/5 | anxiety [4] 41/4 97/12 98/6 98/21 any [111] 4/24 6/4 6/10 9/13 10/12 12/21 13/7 25/13 31/8 33/15 33/25 34/12 39/10 42/8 44/13 46/19 46/20 48/16 50/7 50/16 50/17 50/19 51/3 51/3 51/4 51/6 51/8 51/11 51/13 51/18 51/19 53/24 54/2 54/8 54/11 54/14 60/25 64/16 64/20 75/2 75/22 81/13 87/3 87/19 89/7 89/7 93/16 97/3 100/2 100/6 100/10 103/17 103/19 104/20 104/23 109/5 121/15 136/20 146/16 148/22 152/1 152/3 155/2 159/11 159/12 160/10 173/22 178/1 179/6 181/24 184/10 189/11 190/13 190/14 192/10 202/14 202/17 202/20 202/24 206/6 212/13 214/6 214/17 218/22 219/12 224/15 224/25 228/6 232/13 234/7 234/13 234/20 234/25 236/20 239/12 242/18 242/21 243/15 244/19 246/6 248/2 252/8 255/25 260/14 266/19 267/8 280/13 280/17 280/17 280/21 280/22 | are [129] 4/11 5/11 6/11 8/24 9/9 11/12 12/23 15/15 18/19 20/9 20/11 20/20 33/15 33/18 34/12 37/11 41/22 42/25 43/3 50/25 58/14 64/24 65/2 67/17 68/23 69/18 69/25 71/20 71/21 72/21 74/22 75/8 75/9 76/2 78/16 87/24 90/22 91/12 |
| Alternatively [1] 75/11 | anybody [10] 32/1 32/6 60/5 61/13 104/18 104/19 225/11 246/1 262/21 262/25 | April [6] 77/17 83/2 85/24 96/15 97/8 119/2 arbitrary [1] 70/1 arbitrate [1] 46/10 arbitration [21] 46/8 46/11 46/14 47/2 47/12 48/2 48/6 48/20 48/22 49/2 49/11 49/17 51/9 52/1 52/8 52/16 53/11 70/12 70/16 70/18 70/23 |
| although [3] 114/10 148/2 266/11 | anyone [21] 21/24 24/18 26/17 29/13 30/21 34/25 54/20 57/10 64/22 126/24 153/20 164/4 182/8 186/12 193/12 198/7 199/14 199/16 238/1 247/2 257/19 | arbitrator [1] 53/1 |
| always [9] 23/8 23/8 23/14 30/2 41/11 98/13 155/13 219/6 225/4 | anyone's [2] 6/9 104/24 anything [57] 5/7 12/1 13/17 17/16 19/21 25/24 29/10 30/4 30/21 37/24 49/17 53/12 53/16 54/21 62/11 63/17 64/9 68/15 69/11 70/9 94/18 100/7 | |
| am [20] 5/3 5/12 42/25 58/11 71/16 71/19 82/8 114/5 119/18 123/11 129/19 140/21 151/4 153/19 158/13 188/25 190/2 224/9 233/4 263/24 | anymore [2] 124/4 139/13 | |
| AMAN [1] 79/2 | anyone [21] 21/24 24/18 26/17 29/13 30/21 34/25 54/20 57/10 64/22 126/24 153/20 164/4 182/8 186/12 193/12 198/7 199/14 199/16 238/1 247/2 257/19 | |
| AMAN Daigle [1] 79/2 | anybody [10] 32/1 32/6 60/5 61/13 104/18 104/19 225/11 246/1 262/21 262/25 | |
| Ambien [2] 31/22 39/12 | anymore [2] 124/4 139/13 | |
| ambulance [6] 81/6 81/10 82/24 83/9 84/1 84/25 | anyone [21] 21/24 24/18 26/17 29/13 30/21 34/25 54/20 57/10 64/22 126/24 153/20 164/4 182/8 186/12 193/12 198/7 199/14 199/16 238/1 247/2 257/19 | |
| amended [1] 242/4 | anyone's [2] 6/9 104/24 anything [57] 5/7 12/1 13/17 17/16 19/21 25/24 29/10 30/4 30/21 37/24 49/17 53/12 53/16 54/21 62/11 63/17 64/9 68/15 69/11 70/9 94/18 100/7 | |
| amendment [1] 242/7 | anybody [10] 32/1 32/6 60/5 61/13 104/18 104/19 225/11 246/1 262/21 262/25 | |
| amens [1] 104/23 | anymore [2] 124/4 139/13 | |
| American [1] 173/18 | anyone [21] 21/24 24/18 26/17 29/13 30/21 34/25 54/20 57/10 64/22 126/24 153/20 164/4 182/8 186/12 193/12 198/7 199/14 199/16 238/1 247/2 257/19 | |
| Among [2] 18/11 18/15 | anyone's [2] 6/9 104/24 anything [57] 5/7 12/1 13/17 17/16 19/21 25/24 29/10 30/4 30/21 37/24 49/17 53/12 53/16 54/21 62/11 63/17 64/9 68/15 69/11 70/9 94/18 100/7 | |
| amongst [2] 113/15 241/21 | anybody [10] 32/1 32/6 60/5 61/13 104/18 104/19 225/11 246/1 262/21 262/25 | |
| amount [3] 6/7 208/16 242/25 | anymore [2] 124/4 139/13 | |
| Amy [1] 266/15 | anyone [21] 21/24 24/18 26/17 29/13 30/21 34/25 54/20 57/10 64/22 126/24 153/20 164/4 182/8 186/12 193/12 198/7 199/14 199/16 238/1 247/2 257/19 | |
| Anabelle [3] 31/11 55/18 55/19 | anyone's [2] 6/9 104/24 anything [57] 5/7 12/1 13/17 17/16 19/21 25/24 29/10 30/4 30/21 37/24 49/17 53/12 53/16 54/21 62/11 63/17 64/9 68/15 69/11 70/9 94/18 100/7 | |
| anal [1] 13/11 | anybody [10] 32/1 32/6 60/5 61/13 104/18 104/19 225/11 246/1 262/21 262/25 | |
| anally [2] 13/21 66/9 | anymore [2] 124/4 139/13 | |
| analogy [1] 272/8 | anyone [21] 21/24 24/18 26/17 29/13 30/21 34/25 54/20 57/10 64/22 126/24 153/20 164/4 182/8 186/12 193/12 198/7 199/14 199/16 238/1 247/2 257/19 | |
| analysis [2] 9/7 9/7 | anyone's [2] 6/9 104/24 anything [57] 5/7 12/1 13/17 17/16 19/21 25/24 29/10 30/4 30/21 37/24 49/17 53/12 53/16 54/21 62/11 63/17 64/9 68/15 69/11 70/9 94/18 100/7 | |
| anatomy [1] 36/3 | anybody [10] 32/1 32/6 60/5 61/13 104/18 104/19 225/11 246/1 262/21 262/25 | |
| Andino [5] 24/4 32/7 32/18 263/16 263/18 | anymore [2] 124/4 139/13 | |
| Andrew [2] 2/9 105/16 | anyone [21] 21/24 24/18 26/17 29/13 30/21 34/25 54/20 57/10 64/22 126/24 153/20 164/4 182/8 186/12 193/12 198/7 199/14 199/16 238/1 247/2 257/19 | |
| anesthesia [3] 272/7 272/11 272/13 | anyone's [2] 6/9 104/24 anything [57] 5/7 12/1 13/17 17/16 19/21 25/24 29/10 30/4 30/21 37/24 49/17 53/12 53/16 54/21 62/11 63/17 64/9 68/15 69/11 70/9 94/18 100/7 | |
| anesthetic [4] 271/21 272/3 | anybody [10] 32/1 32/6 60/5 61/13 104/18 104/19 225/11 246/1 262/21 262/25 | |

are... [91] 94/8 100/21 101/3
 101/14 101/14 104/17 105/16
 106/10 110/24 111/19 116/3
 116/11 116/15 118/9 119/17
 129/10 129/15 129/18 134/14
 134/19 139/7 139/25 140/17
 140/22 141/3 141/4 150/10
 150/20 151/21 154/13 154/16
 154/22 157/7 157/22 158/12
 158/19 160/1 161/3 162/21
 163/13 164/22 168/21 175/12
 176/19 183/16 188/1 190/9
 195/21 196/22 201/17 201/23
 202/6 204/13 217/4 218/19
 228/11 230/17 231/22 236/8
 236/9 241/15 242/5 244/6
 244/6 244/17 245/17 245/20
 246/1 246/10 246/15 247/7
 248/16 254/25 255/2 255/3
 256/20 257/3 258/23 259/20
 261/1 262/16 262/18 263/3
 265/15 266/8 266/18 266/19
 267/7 269/12 272/20 272/24
 area [12] 13/8 13/12 13/16
 20/6 40/23 84/12 152/25
 153/3 153/4 153/7 154/3
 190/21
 areas [2] 12/23 109/7
 argue [5] 5/3 5/11 86/23
 269/16 271/5
 arguing [6] 7/8 7/8 8/6 86/23
 194/25 277/7
 argument [8] 5/5 47/7 47/8
 88/16 103/11 269/17 271/12
 276/11
 arguments [1] 101/14
 arise [1] 271/9
 armed [2] 19/23 22/1
 armor [1] 44/18
 arms [1] 42/20
 Armstrong [21] 20/24 21/9
 21/15 22/8 24/20 24/23 27/22
 29/15 29/22 30/8 33/13 35/2
 35/4 186/23 192/22 197/24
 200/7 200/15 225/8 252/24
 253/4
 army [6] 77/23 190/17 191/22
 191/25 193/12 195/17
 around [32] 4/7 19/20 27/1
 37/18 39/14 41/6 41/7 55/15
 64/7 70/17 78/14 124/24
 125/7 126/9 127/17 128/15
 130/25 132/9 137/16 141/19
 163/21 165/23 172/14 173/3
 182/14 183/25 206/4 209/14
 215/4 215/7 215/13 226/16
 arrest [1] 5/13
 arrested [3] 7/23 7/24 98/18
 arrests [1] 6/14
 arrived [8] 6/23 80/4 81/5
 162/19 208/18 208/23 218/13
 222/4
 Arroyo [55] 11/2 26/13 26/15
 28/11 158/5 172/24 173/1
 173/4 173/8 174/2 174/3
 174/13 175/5 175/7 175/24
 176/1 177/3 177/6 178/5
 178/11 178/17 178/20 179/1
 179/5 179/11 179/13 179/20
 179/24 180/1 180/4 180/7

181/1 181/9 181/22 182/3
 183/4 183/20 184/10 184/12
 184/21 187/17 193/8 198/14
 205/14 205/14 206/7 227/11
 228/5 231/14 232/1 232/7
 232/11 234/4 236/7 268/24
 Arroyo's [6] 177/10 184/24
 188/17 231/24 236/5 267/22
 as [167] 8/23 11/11 11/21
 11/23 18/18 20/4 20/23 22/21
 22/21 23/18 27/10 28/15 29/8
 29/10 38/22 39/9 45/3 46/20
 46/20 48/19 50/18 51/5 52/7
 54/9 59/18 60/1 67/6 67/17
 70/22 71/6 71/6 71/7 72/6
 79/1 80/23 80/23 81/18 82/23
 83/4 84/3 87/15 89/14 90/7
 95/2 96/15 97/7 100/14
 102/13 103/22 103/23 104/3
 106/12 107/16 109/9 109/14
 110/3 113/6 113/22 115/9
 117/11 117/11 117/18 120/25
 122/5 127/14 127/23 128/9
 129/20 131/14 131/20 133/14
 137/16 139/5 139/24 141/20
 141/20 142/15 142/20 145/14
 145/14 146/1 150/22 152/1
 152/2 152/24 156/16 157/19
 163/9 163/14 163/19 166/2
 166/2 168/23 172/21 174/24
 176/25 177/19 183/3 185/22
 188/9 189/20 190/4 191/17
 192/18 192/18 194/10 195/25
 198/6 198/23 198/23 199/13
 203/2 204/19 213/24 213/24
 215/8 218/23 219/15 219/15
 219/16 222/11 223/1 223/1
 224/25 225/1 229/15 229/24
 231/13 233/12 239/5 239/11
 239/13 240/3 241/9 241/9
 243/23 243/24 244/12 244/17
 246/1 246/6 246/15 246/15
 246/18 247/21 247/21 251/21
 252/6 254/1 255/9 257/13
 257/13 257/18 259/17 262/5
 262/21 263/7 266/6 267/25
 269/21 271/18 272/10 272/20
 272/24 279/18 279/18 280/7
 ask [52] 11/25 40/7 43/20
 46/17 46/21 46/25 53/13
 53/14 59/1 59/1 71/19 71/24
 76/13 82/9 93/6 93/7 94/17
 95/3 98/3 101/25 106/12
 108/1 119/11 138/14 138/19
 139/20 141/18 182/12 183/2
 191/18 192/25 192/25 193/10
 197/12 198/2 198/3 198/7
 199/9 199/10 199/14 199/16
 203/10 213/13 216/4 220/11
 224/10 224/12 226/13 242/15
 247/11 264/21 281/20
 asked [33] 25/8 27/5 28/14
 28/15 28/19 29/16 30/6 32/4
 92/18 93/16 106/17 127/15
 141/18 165/17 166/1 168/23
 190/24 190/25 195/22 196/15
 204/6 219/23 223/2 227/1
 227/1 237/5 237/25 242/10
 243/9 251/2 251/10 263/3
 267/7
 asking [31] 28/7 79/15 83/12
 90/23 92/7 93/12 97/25

112/22 116/22 123/11 125/4
 150/6 153/23 166/20 167/18
 175/21 175/22 179/15 183/18
 187/22 193/11 199/15 199/16
 203/21 213/7 219/2 254/10
 257/7 267/8 273/25 274/2
 asks [1] 11/20
 asleep [5] 120/9 122/4 122/9
 185/14 187/24
 aspect [2] 152/8 245/9
 assailant [2] 185/19 193/18
 assailants [1] 185/16
 assault [14] 5/15 5/16 5/20
 6/20 53/25 76/25 85/17 95/1
 97/8 185/11 185/23 186/2
 186/9 279/10
 assaulted [4] 6/22 53/9 85/21
 190/6
 assaulting [1] 76/24
 assaultive [1] 94/23
 assertion [1] 271/17
 assets [2] 260/9 260/13
 assigned [1] 136/9
 assist [1] 75/22
 assistance [7] 75/23 84/13
 190/3 190/11 204/4 227/17
 227/22
 assistant [1] 246/4
 assisted [2] 45/21 45/22
 associated [1] 84/19
 Association [3] 50/23 50/25
 51/16
 assume [2] 101/7 245/16
 assumed [3] 187/19 197/10
 197/16
 assumes [3] 266/7 266/8
 267/21
 assumption [3] 87/11 197/19
 271/16
 assumptions [1] 81/16
 at [311]
 ataxia [1] 115/7
 attached [3] 51/11 169/12
 169/13
 attachment [2] 171/8 171/11
 attack [4] 15/9 97/12 98/6
 98/21
 attacked [2] 36/25 104/13
 attempt [4] 79/6 255/17
 257/21 258/2
 attempts [1] 13/11
 attendants [2] 81/10 83/9
 attention [13] 10/21 42/9
 80/12 116/19 117/6 158/24
 168/17 171/3 217/15 225/6
 236/8 237/20 245/22
 attentive [1] 71/6
 attire [1] 259/13
 attorney [9] 1/18 26/10 69/12
 69/21 71/25 106/18 203/10
 264/16 277/24
 attorneys [2] 75/13 242/18
 attributed [2] 174/25 175/3
 augmentation [6] 35/20 132/23
 259/25 260/21 260/25 261/8
 August [19] 35/13 43/22 43/25
 44/8 109/22 110/4 122/16
 122/22 122/25 123/25 130/22
 132/13 133/7 177/7 189/22
 191/21 238/24 239/1 239/4
 August 23rd [1] 35/13
 August 2nd [1] 189/22

| A Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 289 of 335 | | |
|--|---|--|
| August 31st [3] 238/24 239/1 239/4 | badly [7] 13/16 20/23 29/21 30/16 34/8 66/5 215/14 | 163/5 163/6 163/7 163/8 163/9 164/6 164/11 164/16 167/1 168/10 168/14 171/4 173/7 174/8 174/24 176/5 176/12 176/16 179/2 179/3 179/18 186/2 187/3 196/5 198/22 200/2 200/4 200/6 201/6 201/7 201/7 201/11 201/22 204/2 206/13 206/22 214/4 219/12 219/15 220/12 221/7 221/12 223/1 223/25 224/6 226/22 227/25 228/18 231/5 233/17 233/25 235/13 235/13 236/10 236/13 236/13 238/21 239/10 240/3 240/12 240/15 242/20 243/15 245/12 246/15 247/8 247/12 247/13 248/7 248/12 248/23 248/23 248/23 251/21 252/22 252/25 253/9 253/12 253/19 253/24 254/4 255/4 255/6 255/12 256/2 256/21 257/3 261/7 261/11 261/17 262/2 262/17 262/23 263/1 263/11 263/14 263/16 264/1 271/18 272/15 274/3 279/16 280/5 280/23 282/20 |
| August 5th [2] 43/22 44/8 | Baghdad [8] 23/5 26/8 32/2 32/6 37/15 158/5 190/8 250/18 | Bear [1] 186/15 |
| auspices [2] 50/20 51/7 | Baileys [4] 208/10 208/11 209/17 209/21 | beat [1] 67/23 |
| author [1] 158/24 | balance [2] 107/24 108/1 | became [5] 42/13 45/13 86/8 124/20 128/23 |
| authorities [5] 25/8 25/9 30/8 77/3 200/11 | Balboa [1] 81/9 | because [142] 6/24 7/16 13/1 17/16 21/7 30/7 30/15 31/2 31/13 32/10 32/25 34/7 35/21 36/3 36/17 37/11 37/19 38/1 39/3 40/12 42/3 42/8 42/12 43/17 45/13 46/12 46/21 49/25 54/18 60/14 66/19 67/11 69/11 73/6 74/6 77/25 81/15 86/8 92/22 94/11 94/15 94/21 95/15 98/13 98/24 99/2 104/5 105/11 108/24 109/18 111/12 114/8 114/21 116/1 116/6 122/9 125/10 128/18 128/22 130/15 131/17 136/14 137/24 138/2 145/12 146/11 146/21 147/6 147/7 148/7 148/14 149/24 149/25 152/15 155/13 159/15 160/9 163/22 166/22 170/12 170/16 171/5 172/25 177/13 178/19 179/2 184/21 185/4 187/2 187/17 191/7 191/17 191/18 191/24 193/8 194/9 197/3 197/19 198/10 198/12 198/17 199/22 203/11 206/12 208/15 208/21 208/24 209/8 212/7 212/24 215/4 215/13 215/14 228/16 229/21 232/10 234/21 236/2 236/7 243/12 248/6 250/4 251/8 251/22 252/1 252/24 253/2 253/21 255/9 256/8 262/9 263/12 264/1 264/7 266/13 266/14 276/19 277/3 278/15 280/2 280/10 282/11 |
| avoid [2] 49/17 70/12 | bandaged [1] 37/18 | become [6] 23/13 45/5 45/16 55/13 110/3 139/22 |
| avoidance [1] 141/21 | bandages [3] 37/19 37/20 37/23 | becomes [2] 216/21 217/13 |
| avoided [1] 141/22 | banging [1] 21/21 | becoming [1] 119/22 |
| aware [12] 45/13 94/19 97/18 142/5 175/12 175/12 175/14 175/16 202/21 219/16 221/6 228/10 | bar [4] 84/16 86/14 101/17 101/22 | bed [5] 20/5 27/4 179/21 190/23 191/3 |
| away [6] 40/22 60/22 98/10 118/23 128/23 132/7 | barbecue [2] 41/25 42/6 | bedroom [3] 37/22 137/12 |
| awe [1] 23/8 | Barely [1] 178/14 | |
| awhile [6] 42/10 42/14 63/5 218/24 242/3 268/9 | bargain [2] 4/22 25/19 | |
| | barracks [4] 19/17 205/20 206/4 212/23 | |
| | Barron [3] 2/13 283/8 283/9 | |
| B | base [4] 76/18 86/8 223/13 269/23 | |
| B109 [7] 154/20 154/21 155/1 155/23 156/11 170/12 170/17 | baseball [5] 81/7 81/11 81/19 86/13 87/4 | |
| B110 [7] 152/6 154/20 154/22 154/25 155/5 169/10 169/13 | based [9] 104/20 108/12 146/9 162/13 162/21 163/1 209/19 213/17 259/8 | |
| B153 [5] 106/8 106/15 106/20 107/8 118/14 | basically [2] 162/11 188/23 | |
| B164 [3] 119/14 119/21 120/23 | basis [9] 65/2 161/14 161/15 162/6 162/13 177/13 250/2 256/23 267/8 | |
| B165 [3] 143/6 143/7 143/18 | bat [7] 81/7 81/11 81/19 86/13 87/4 90/2 90/5 | |
| B2 [2] 129/12 135/1 | Bates [4] 15/22 15/23 17/24 76/2 | |
| B3 [1] 129/14 | bathroom [7] 16/21 16/22 20/6 37/25 42/21 116/9 222/15 | |
| B67 [8] 201/14 201/16 201/17 202/4 202/12 206/24 226/7 237/15 | be [245] 4/4 4/25 7/12 8/5 8/23 9/6 9/6 9/7 9/8 9/21 10/4 11/10 13/1 14/20 20/21 20/22 21/6 22/25 30/8 31/13 32/13 38/5 41/6 41/7 42/2 46/15 46/22 47/2 48/2 49/12 51/17 52/11 55/13 56/12 57/15 60/8 61/3 62/10 62/14 63/1 63/13 63/17 67/7 67/14 70/20 71/5 71/20 72/8 72/25 73/5 73/12 74/7 75/1 75/4 75/22 76/9 78/12 78/18 81/24 82/4 84/8 84/8 85/22 86/16 87/9 88/3 89/3 89/8 90/1 90/24 90/25 91/5 93/13 94/5 94/24 95/16 96/4 97/2 98/12 98/13 98/19 99/9 99/12 100/3 100/15 101/5 101/13 101/23 103/17 103/23 104/2 104/6 104/7 104/8 104/22 105/10 106/2 106/11 109/5 110/20 113/7 115/8 117/3 117/9 117/25 119/14 123/4 124/11 124/18 125/9 126/1 127/17 128/6 129/16 129/21 130/17 130/25 133/15 134/1 134/2 134/13 135/25 136/13 137/15 137/16 138/7 139/11 140/12 142/1 142/14 145/23 146/20 147/22 148/19 153/6 153/12 157/19 158/9 158/17 162/11 | |
| B69 [2] 189/8 189/10 | | |
| B98 [3] 201/10 201/15 241/25 | | |
| baby [9] 155/9 155/10 155/14 156/3 156/7 168/20 169/6 170/3 171/8 | | |
| Bachelor's [1] 45/4 | | |
| back [90] 9/22 13/9 13/10 18/6 18/19 18/23 21/18 27/5 27/6 28/23 32/15 32/15 34/20 43/8 43/23 49/8 50/12 53/4 55/4 55/9 57/7 62/6 63/11 79/18 79/20 79/23 94/21 99/9 100/14 101/1 101/11 104/15 110/4 110/19 112/6 113/17 120/1 120/3 130/22 131/10 134/1 136/6 136/8 139/3 140/21 143/24 145/18 149/2 155/17 158/2 164/20 164/22 165/5 169/20 170/5 183/7 188/9 188/10 194/16 199/6 205/12 213/1 213/25 214/1 214/12 215/21 215/25 216/3 216/21 217/16 219/4 221/19 223/2 225/6 225/7 225/8 226/7 232/1 234/4 237/15 238/25 242/3 242/17 251/8 259/3 263/1 264/7 264/12 270/25 280/11 | | |
| background [5] 76/23 82/7 133/24 174/24 205/10 | | |
| bad [16] 56/8 103/22 104/12 125/8 128/7 128/8 131/12 131/18 148/7 148/17 158/9 | | |

bedroom... [1] 149/18
 been [121] 4/16 11/6 11/9
 13/25 14/4 14/19 17/12 17/13
 22/7 26/13 32/3 36/13 36/15
 39/16 40/18 42/18 48/12 50/9
 53/5 53/9 54/14 54/21 55/4
 58/16 60/18 61/21 62/6 62/24
 64/21 66/7 69/1 69/3 69/11
 75/3 78/14 78/23 79/18 86/1
 87/13 87/15 87/25 89/16 90/3
 92/25 93/2 98/10 103/6
 104/13 108/17 109/24 110/8
 110/15 112/9 113/22 114/10
 115/15 116/1 117/1 119/2
 119/4 122/25 126/20 128/10
 128/25 136/12 142/7 143/8
 148/2 152/17 156/24 158/23
 162/8 166/18 169/24 170/2
 171/2 174/25 175/3 182/11
 182/21 187/7 192/15 195/23
 197/25 198/11 198/16 199/24
 204/9 204/14 205/17 205/23
 206/18 207/12 215/1 215/14
 219/6 220/25 222/3 222/6
 230/7 236/25 240/2 241/5
 245/4 246/19 246/20 246/24
 247/3 248/2 248/3 248/10
 248/20 248/20 250/22 255/21
 255/22 259/23 261/4 261/19
 266/11 272/11
 before [67] 1/10 5/7 11/21
 13/23 14/1 15/9 17/3 17/17
 24/7 29/13 32/5 32/6 32/21
 32/23 35/22 39/11 44/3 44/5
 63/17 66/12 74/15 76/7 91/24
 96/19 100/6 100/7 101/13
 120/15 124/17 130/4 131/17
 132/3 143/20 152/7 158/18
 168/18 170/2 176/23 179/24
 182/8 182/11 186/19 187/8
 192/2 192/20 202/18 202/19
 205/22 215/13 221/1 221/2
 221/9 221/9 229/22 231/10
 232/8 239/19 240/7 242/3
 243/12 267/8 270/19 270/20
 272/17 277/11 278/15 279/22
 began [8] 79/7 80/12 86/18
 116/10 120/11 125/24 165/19
 182/8
 begin [6] 71/16 106/8 122/19
 144/25 203/20 269/22
 beginning [19] 50/12 71/25
 76/2 77/6 81/3 135/10 135/21
 164/24 196/7 199/22 204/7
 210/25 228/24 231/3 237/19
 237/21 243/14 245/4 246/18
 begins [13] 105/18 108/21
 112/9 183/14 183/24 184/4
 184/6 190/2 211/2 213/6
 213/17 236/11 273/17
 begun [1] 245/7
 behalf [4] 28/19 50/19 51/6
 249/16
 behavior [9] 40/13 45/2 94/23
 154/4 161/19 161/19 226/19
 280/14 280/15
 behind [11] 10/7 11/12 19/22
 20/1 20/3 61/5 74/4 144/23
 153/11 153/14 154/2
 being [55] 7/19 8/23 22/7

92/8 98/18 106/17 107/3
 111/7 113/19 116/15 120/21
 121/23 130/14 139/17 140/5
 146/24 156/14 157/25 186/1
 190/4 194/5 194/5 194/19
 194/20 196/17 196/18 196/22
 199/22 209/9 214/11 220/2
 223/11 223/19 228/4 237/5
 243/16 248/11 250/7 251/15
 257/4 257/8 257/9 257/15
 258/21 266/14
 belabor [1] 132/6
 belief [1] 141/10
 believe [52] 8/20 14/3 15/8
 18/12 24/5 39/13 39/17 39/22
 49/10 57/15 58/19 61/18 64/2
 64/6 76/11 89/4 89/18 92/4
 100/15 107/13 111/20 118/22
 127/2 141/13 143/10 145/6
 150/6 155/14 155/17 161/6
 165/7 165/21 165/25 166/4
 166/7 167/5 169/13 171/18
 175/15 185/6 201/7 205/13
 209/3 211/24 228/24 229/20
 234/23 242/23 255/5 263/3
 263/15 278/2
 believed [4] 166/10 179/17
 198/11 198/12
 belongings [1] 33/15
 below [1] 109/6
 bench [1] 75/11
 Beneta [7] 206/16 220/18
 220/20 221/11 221/11 232/10
 236/10
 benzodiazepines [1] 18/15
 beside [2] 134/5 209/14
 best [2] 101/22 246/5
 better [10] 8/7 8/9 21/6 36/8
 62/18 62/19 63/9 91/13
 201/11 261/13
 between [18] 12/19 27/18
 36/17 36/19 76/14 97/5 135/8
 135/17 165/6 169/5 172/2
 180/2 196/8 198/4 199/12
 216/5 222/3 235/18
 beyond [3] 69/9 244/18 257/20
 bidding [1] 175/2
 big [9] 33/8 52/12 171/4
 180/24 182/16 184/5 234/25
 247/8 281/16
 bigger [3] 19/23 80/22 253/20
 biggest [1] 6/2
 Bill [1] 15/22
 bills [1] 138/4
 binding [3] 49/11 52/11 52/16
 bird [5] 33/4 33/7 33/10
 33/11 44/17
 birthday [4] 130/14 133/9
 133/19 134/23
 bit [19] 17/2 34/19 56/17
 57/7 78/8 80/22 99/3 107/14
 108/11 131/17 156/12 158/8
 169/2 180/24 205/9 208/15
 231/21 256/5 279/24
 bite [1] 124/19
 bitter [1] 113/8
 bizarres [1] 18/17
 black [3] 33/9 122/2 191/21
 blacked [4] 119/25 122/9
 276/3 276/4

blackened [1] 7/5
 blacking [4] 119/12 120/10
 121/22 122/5
 blackout [6] 120/6 241/7
 275/22 281/13 281/14 282/14
 blackouts [1] 120/3
 Blake [1] 2/4
 blank [3] 185/10 186/1 214/23
 blind [1] 225/11
 blocking [1] 154/3
 blond [1] 28/25
 blood [5] 16/17 16/20 80/9
 89/11 90/1
 bloodshot [1] 89/8
 blouses [2] 262/1 262/2
 blow [3] 62/2 107/14 231/11
 blown [1] 170/16
 blue [3] 11/16 60/22 217/4
 blurry [2] 119/24 121/22
 board [1] 225/10
 bodies [1] 75/9
 body [11] 17/7 17/20 24/7
 44/18 85/4 157/11 183/7
 189/5 239/7 257/23 257/24
 Bolster [1] 255/18
 bolstered [1] 255/23
 bolstering [1] 255/22
 bombs [2] 255/12 257/21
 bone [1] 84/17
 book [1] 31/23
 Booney [1] 89/19
 born [3] 31/10 41/17 172/10
 BORTZ [99] 2/8 6/13 8/2 28/21
 28/22 29/4 29/4 58/3 58/5
 63/18 64/22 64/24 65/5 76/10
 82/4 82/17 85/3 88/17 90/6
 90/25 91/5 91/15 92/1 95/25
 96/24 100/9 103/19 129/16
 129/20 129/24 130/3 133/4
 135/4 135/9 135/10 135/12
 135/20 154/14 154/14 159/4
 168/3 172/22 173/7 176/5
 178/17 179/21 180/2 187/8
 189/1 190/6 190/8 190/15
 190/20 190/23 190/24 191/3
 199/25 205/17 206/3 206/7
 206/15 207/7 207/11 207/22
 208/2 208/19 209/8 209/15
 209/17 209/20 211/22 212/3
 212/12 212/22 215/18 220/5
 220/6 220/14 220/14 220/19
 225/2 225/16 226/2 228/11
 235/8 235/14 235/22 237/2
 237/25 238/2 241/3 241/12
 255/3 255/5 256/2 256/4
 256/13 258/1 273/12
 Bortz 110 [1] 154/14
 Bortz' [21] 4/17 28/21 205/22
 208/20 210/7 213/7 217/22
 218/12 221/5 221/20 226/23
 229/11 229/20 230/5 230/11
 235/21 239/8 239/11 254/22
 255/11 277/24
 boss [7] 57/14 57/15 113/23
 114/1 114/11 114/13 114/13
 both [27] 9/19 13/20 75/10
 78/11 80/8 80/9 100/20
 106/10 110/1 110/5 110/8
 116/2 118/2 124/19 152/23
 154/21 168/24 175/13 175/22
 190/8 190/15 190/20 255/16
 258/21 262/11 272/20 279/14

| B Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 291 of 335 | | |
|--|--|--|
| <p> bother [1] 43/12 bottle [1] 205/7 bottom [23] 76/1 77/5 80/3 80/14 80/18 81/3 81/4 88/19 92/3 92/17 108/16 112/8 132/19 135/9 135/21 136/17 185/7 185/8 199/25 200/2 200/4 210/18 258/24 bottom-of-the-line [1] 132/19 bought [3] 29/2 42/3 132/15 bowling [12] 76/18 77/20 78/14 79/7 79/23 86/7 86/18 88/13 97/9 98/9 99/4 163/13 box [1] 69/21 boy [1] 155/10 boyfriend [24] 43/6 122/17 124/4 130/15 132/11 133/19 134/23 138/15 141/14 144/22 145/1 146/1 146/5 146/11 146/11 148/19 150/16 206/19 210/16 233/19 233/25 235/20 236/11 278/21 bra [7] 11/18 11/21 11/23 20/13 20/14 30/18 38/4 brand [1] 281/5 brazen [1] 226/22 break [26] 9/13 22/17 58/18 58/21 99/8 100/7 104/16 153/16 158/10 158/12 158/18 164/20 168/18 176/12 177/22 178/18 195/4 220/14 220/20 220/21 222/16 222/18 222/19 232/9 236/1 237/3 breaking [4] 158/13 220/18 220/22 221/11 breaks [2] 172/18 236/11 Breanna [1] 136/2 breast [10] 35/19 36/10 37/3 42/17 132/23 259/25 260/15 260/21 260/25 261/6 breasts [6] 36/22 38/11 43/11 261/9 261/12 261/21 Brendon [1] 85/10 Brian [3] 65/17 65/23 203/17 brief [3] 59/7 68/12 242/2 briefed [2] 4/16 5/21 briefly [4] 4/4 80/4 118/21 262/24 bring [15] 9/14 23/9 56/3 60/23 67/11 102/18 102/20 146/19 148/4 199/4 247/21 256/6 258/1 264/6 277/4 bringing [1] 258/3 brings [1] 216/21 broke [2] 122/18 132/11 broken [5] 23/10 43/7 87/1 122/17 236/12 brought [15] 30/21 71/22 86/5 116/18 117/6 125/13 148/17 156/16 156/16 215/21 215/25 216/3 245/22 247/20 272/17 BROWN [3] 1/6 1/7 190/8 bruise [4] 12/16 12/17 89/20 90/2 bruises [6] 11/24 12/1 12/19 13/1 28/3 28/5 bruising [3] 12/14 12/18 84/24 Brumatti [2] 206/16 220/18 brutally [1] 250/18 </p> | <p> Buddy [2] 22/11 22/13 Budging [1] 21/20 building [2] 77/19 84/14 bunch [2] 206/2 268/18 burden [4] 137/1 137/14 149/11 280/19 Bureau [2] 189/21 191/20 buried [3] 21/7 22/9 54/6 Burnett [14] 109/8 109/9 109/15 109/17 109/21 109/24 110/10 111/9 111/24 112/3 112/9 112/21 113/3 113/11 business [3] 45/9 52/12 53/2 but [271] 4/16 4/19 4/25 5/3 6/16 6/17 7/4 7/22 8/1 8/5 9/7 11/1 11/22 12/24 13/20 14/20 16/22 22/16 24/1 27/16 37/14 37/22 38/4 41/24 42/18 43/7 44/23 46/6 46/20 56/7 60/14 62/10 63/6 63/10 64/20 67/6 67/22 67/24 68/21 68/23 69/22 69/23 78/9 81/18 81/24 83/15 87/23 90/3 92/9 93/2 93/6 94/10 94/21 95/14 96/12 96/18 98/14 98/16 99/1 100/2 100/5 100/18 101/23 102/21 103/14 104/7 104/22 105/11 108/9 108/13 110/7 110/21 111/6 111/23 112/1 115/15 115/21 116/5 116/21 117/6 117/14 117/24 118/8 123/14 124/13 125/25 126/9 126/10 129/4 130/12 130/24 131/13 131/15 132/2 132/7 133/24 134/7 134/18 137/5 138/19 139/10 139/17 140/13 142/2 142/13 143/4 145/6 145/12 147/23 150/4 150/5 150/20 151/4 151/9 151/15 151/17 152/24 153/5 153/9 153/14 153/23 154/17 155/25 156/10 156/19 159/14 159/15 160/21 161/11 161/14 162/4 164/2 164/12 165/22 166/7 166/10 166/14 167/11 167/14 167/15 167/16 167/22 169/10 169/25 170/7 170/16 171/3 171/22 172/14 173/13 176/1 176/6 176/17 180/24 181/8 182/11 182/23 183/21 184/24 185/6 186/4 187/1 188/16 188/17 190/17 191/3 192/20 195/14 197/11 197/19 198/15 199/2 201/1 201/10 201/21 201/25 202/8 203/11 204/20 205/11 206/3 206/3 207/23 208/9 208/16 208/22 210/10 212/1 212/19 214/6 215/7 218/25 219/18 220/12 221/1 221/2 221/5 221/21 223/14 224/11 225/7 226/8 226/14 228/6 229/23 230/8 232/14 232/20 234/2 234/4 234/10 234/17 235/3 237/4 238/2 238/4 239/6 240/23 241/15 242/11 242/24 243/5 244/1 246/21 246/24 247/6 247/22 248/6 248/7 248/19 249/22 250/14 250/21 253/2 253/20 255/5 255/10 256/22 257/20 257/25 260/23 261/2 261/10 261/15 261/18 262/16 263/7 263/16 </p> | <p> 263/24 265/5 265/13 266/15 268/9 269/9 270/18 272/11 272/17 273/12 273/16 276/5 276/14 276/18 276/20 277/11 278/22 279/22 280/3 280/20 281/8 281/16 282/2 But -- I [1] 117/24 But -- you [1] 37/14 butt [2] 228/12 229/14 butt-dialed [2] 228/12 229/14 button [1] 69/8 buy [2] 18/16 135/2 bypass [5] 131/2 131/4 131/15 131/25 132/3 C Cabana [1] 114/5 California [1] 36/18 call [28] 21/14 42/11 90/8 93/12 102/10 136/12 145/2 212/11 222/25 223/2 223/2 223/20 224/2 228/13 230/5 230/8 230/11 230/12 239/4 240/13 240/24 248/15 249/14 249/25 250/14 257/17 263/14 263/16 called [57] 6/21 23/4 27/5 28/14 30/7 32/3 33/4 33/7 42/12 50/16 63/4 86/3 86/10 90/11 92/10 101/5 128/22 145/1 146/5 150/17 151/4 157/24 162/12 168/17 171/2 193/25 205/14 205/14 211/22 211/24 212/3 212/7 212/16 212/16 212/17 212/22 223/1 223/12 223/19 227/12 228/11 228/18 229/11 229/20 229/21 230/5 238/24 245/12 246/15 249/15 250/4 250/5 250/13 250/15 250/17 256/16 258/5 caller's [1] 136/15 calling [7] 59/16 93/14 212/24 249/5 249/5 272/12 272/13 calls [13] 22/13 52/3 184/13 196/13 228/7 230/1 230/5 230/12 253/15 253/15 253/23 264/15 265/8 came [29] 28/13 30/4 30/9 30/22 37/19 38/22 64/4 79/9 79/18 90/5 108/11 109/17 114/7 140/6 182/14 183/6 184/1 186/24 187/23 191/10 193/15 193/24 194/18 196/15 206/7 219/4 249/24 272/4 276/9 camera [2] 61/23 61/24 camp [9] 168/19 169/5 179/3 204/11 232/2 233/13 233/20 234/1 234/6 camps [1] 54/12 campus [1] 55/15 can [134] 5/1 7/1 8/4 10/16 12/5 12/17 16/2 17/24 23/24 24/7 27/25 37/9 38/3 38/4 39/17 41/9 41/15 45/19 46/15 46/25 48/8 48/15 52/4 56/11 60/1 62/2 62/3 62/8 62/10 62/11 62/17 63/9 67/25 68/7 72/23 73/5 73/15 75/9 76/7 77/12 80/6 80/22 80/23 82/5 82/13 83/17 85/13 89/14 91/8 </p> |

can... [85] 91/21 95/3 97/7
 101/6 101/23 101/24 102/18
 102/20 103/12 103/19 104/16
 105/5 105/9 105/23 106/23
 107/5 107/16 107/25 108/10
 112/5 112/16 121/3 124/10
 126/16 126/16 126/19 127/2
 127/14 127/22 135/21 140/18
 142/9 146/16 149/1 149/3
 153/24 154/18 156/12 157/3
 168/7 169/4 170/12 170/13
 170/16 171/13 176/7 176/8
 176/16 181/14 185/25 189/17
 189/20 189/22 190/23 199/8
 201/12 202/1 208/21 211/18
 215/8 215/11 218/8 222/15
 224/21 225/25 229/24 230/4
 231/2 231/13 232/4 233/12
 236/21 246/9 247/2 247/10
 247/11 252/21 262/20 262/25
 267/16 270/24 270/24 271/22
 274/19 277/14
 can't [33] 7/6 26/25 29/21
 38/19 47/17 59/20 60/25
 62/12 62/13 80/5 88/3 104/5
 105/5 115/16 160/24 178/3
 225/4 245/24 248/17 248/23
 248/23 249/18 249/20 252/5
 254/17 278/1 278/8 279/3
 280/5 281/15 281/17 281/17
 281/21
 canceled [1] 128/22
 cannot [9] 60/3 72/25 72/25
 77/18 106/25 128/11 177/22
 245/23 248/23
 capacity [2] 62/8 273/6
 capital [1] 133/8
 caps [1] 135/1
 Captain [1] 89/18
 capture [2] 86/22 87/2
 captured [1] 95/10
 car [13] 19/21 28/11 53/16
 60/22 60/24 60/25 61/1 61/5
 132/18 132/18 162/19 179/6
 257/21
 card [2] 238/14 238/20
 care [12] 4/13 11/5 20/23
 31/7 57/14 82/23 102/17
 119/14 130/14 154/14 240/24
 245/18
 cared [1] 133/20
 career [1] 179/4
 careful [2] 21/7 98/23
 carefully [3] 7/4 192/21
 199/2
 caretaker [1] 42/19
 Carolina [6] 5/13 5/25 6/2
 6/24 7/2 7/2
 carrying [4] 6/7 61/4 216/4
 235/4
 cars [1] 162/21
 case [58] 7/22 12/10 24/15
 35/11 36/16 46/10 52/21
 52/25 55/22 61/10 71/25 72/4
 72/9 92/8 100/5 110/3 127/23
 133/16 155/21 159/25 160/1
 160/4 160/4 160/7 160/15
 161/4 161/10 162/4 163/14
 177/23 183/21 186/25 187/3
 189/21 195/13 202/22 216/21

217/13 223/24 223/25 229/8
 240/14 248/3 248/12 258/1
 269/13 271/8 272/7 272/22
 273/4 273/5 275/20 276/21
 277/3 278/16 280/8 281/7
 282/13
 Castillo [1] 209/2
 Castillo's [3] 209/3 210/5
 210/8
 casual [2] 281/12 282/13
 catch [2] 96/1 148/8
 Cates [1] 2/3
 caught [5] 232/2 233/13
 233/20 234/1 234/5
 cause [4] 38/11 152/10 261/1
 283/4
 caused [1] 87/22
 causing [1] 117/20
 cautious [1] 179/2
 ceased [2] 165/7 222/5
 ceases [1] 221/24
 Celia [1] 61/9
 cell [6] 205/23 211/23 212/10
 228/10 238/24 239/4
 cellular [1] 60/15
 center [7] 81/9 165/10 166/6
 167/8 168/15 240/19 241/4
 centerpiece [1] 278/16
 certain [7] 64/21 64/24 75/5
 124/21 125/10 131/22 156/10
 certainly [12] 5/1 8/4 9/1
 9/7 101/24 153/20 161/10
 183/4 223/16 246/10 254/8
 271/16
 Certification [1] 283/3
 certify [1] 283/4
 cetera [9] 80/13 80/13 95/9
 112/11 112/11 149/22 149/22
 190/15 196/17
 chagrin [1] 104/20
 chain [1] 136/21
 chair [1] 84/15
 challenged [1] 126/23
 chance [6] 52/11 143/20
 192/25 206/12 227/12 248/5
 change [7] 82/14 99/7 118/21
 171/5 246/24 247/8 247/12
 changed [12] 38/22 38/24
 85/24 86/6 88/12 194/21
 243/4 243/5 243/7 243/10
 243/11 243/13
 changes [2] 171/1 244/6
 changing [1] 113/9
 Chapman [11] 102/7 102/13
 102/18 103/5 247/20 249/9
 249/10 253/6 253/8 253/15
 253/19
 character [2] 104/13 257/16
 characterized [1] 146/1
 charge [2] 164/1 252/22
 charges [1] 71/21
 CHARLES [41] 2/8 4/17 29/4
 58/3 58/5 63/17 64/22 64/24
 172/22 173/7 179/21 187/8
 190/6 205/17 206/3 207/11
 207/22 209/20 211/22 212/3
 212/12 212/22 220/17 220/20
 221/10 225/16 228/11 229/11
 230/5 232/8 232/9 235/8
 235/14 235/18 235/21 235/22
 237/2 237/11 238/2 238/7
 256/13

chatted [1] 212/23
 check [6] 6/24 29/3 43/18
 136/10 223/9 239/22
 checked [1] 164/20
 cheek [4] 83/7 84/1 84/15
 84/17
 Cheryll [3] 2/13 283/8 283/9
 chest [6] 34/5 34/6 34/13
 34/21 35/1 35/21
 Chester [1] 1/22
 chief [11] 83/6 85/4 85/17
 90/21 92/5 92/7 92/18 93/14
 94/9 95/17 223/25
 child [3] 40/1 110/9 111/3
 children [1] 55/6
 Chip [1] 158/25
 choice [5] 150/20 151/13
 157/20 179/22 181/8
 chose [4] 54/18 139/12 148/3
 183/19
 chosen [2] 139/6 140/22
 Christian [3] 55/5 55/7 55/12
 Christmas [3] 124/24 125/7
 127/18
 Christmastime [1] 126/1
 chronic [1] 144/14
 chronological [2] 215/4 215/8
 chronologically [1] 215/2
 chronology [3] 174/22 248/5
 248/8
 Chu [4] 8/18 8/21 9/3 9/4
 Ciaravino [1] 34/14
 Cindy [1] 135/25
 CindyJones [1] 135/23
 Circuit [1] 159/25
 circumcision [2] 145/6 151/10
 circumstances [5] 51/15
 101/15 130/20 265/14 265/16
 City [1] 159/24
 civil [1] 226/21
 civilian [1] 90/8
 civilians [1] 250/19
 claim [4] 65/2 104/9 279/10
 279/11
 claimed [2] 81/7 191/11
 claiming [1] 81/18
 clarified [1] 229/15
 clarify [2] 4/10 185/25
 clarifying [1] 171/18
 class [3] 172/6 172/10 172/17
 clause [2] 101/16 248/18
 clean [2] 244/16 244/19
 cleaned [1] 279/22
 cleaned-up [1] 279/22
 clear [17] 48/19 49/11 51/25
 67/14 87/6 94/24 103/7
 152/14 153/12 157/1 175/6
 175/19 180/22 196/20 196/24
 251/14 252/23
 cleared [1] 279/24
 clearer [1] 62/3
 clearly [17] 47/5 47/9 47/15
 93/19 124/12 194/15 211/12
 252/21 253/2 273/7 273/11
 275/17 275/20 277/15 277/23
 279/14 282/15
 clerk [2] 240/12 241/2
 client [3] 71/16 71/22 256/6
 clinic [1] 174/10
 clip [3] 66/12 170/13 171/13
 clip-on [2] 170/13 171/13
 clips [2] 65/1 70/6

close [16] 20/3 78/1 84/17
93/24 93/25 94/1 94/3 94/5
94/7 110/7 117/14 137/8
152/23 184/5 253/1 280/4
closed [2] 182/16 190/8
closer [3] 38/22 91/7 257/17
closest [1] 240/15
closure [1] 45/3
clothes [10] 11/18 11/20
19/15 21/4 25/21 25/23 29/16
30/23 261/13 261/20
clue [1] 222/7
CM [1] 2/13
CMR [1] 283/9
coair.com [1] 135/23
cocktail [9] 178/8 209/15
209/20 210/5 213/7 214/13
214/17 214/20 215/18
cocktails [3] 213/9 214/4
214/9
code [3] 50/23 50/23 51/16
coding [1] 266/3
coerced [4] 123/12 197/25
198/1 200/8
coercing [1] 133/17
coercion [1] 57/9
cohabitating [1] 57/24
Colatosti [1] 190/2
collect [1] 13/11
collected [1] 11/22
collecting [1] 12/3
collector [1] 11/16
collects [2] 11/19 13/6
college [4] 44/23 55/8 55/13
255/24
color [5] 62/17 171/4 171/5
175/17 266/3
Combat [2] 227/18 227/22
come [76] 18/25 19/22 24/18
25/18 62/10 63/11 68/14
79/20 79/23 81/22 81/23
81/24 84/5 86/20 100/20
102/24 103/6 105/20 105/23
105/24 110/19 113/12 113/25
114/1 114/7 122/19 142/18
146/23 152/10 159/15 159/16
160/21 162/24 163/4 163/20
163/23 164/2 164/7 164/11
168/15 177/18 177/22 178/3
181/10 183/4 187/13 188/3
188/4 188/6 189/7 193/13
198/3 198/12 199/10 199/21
203/12 214/1 245/6 249/3
251/3 253/8 256/11 256/12
266/11 267/13 268/3 269/1
270/13 272/8 273/23 274/7
277/10 277/10 278/3 278/6
279/16
comes [14] 8/2 20/24 24/21
158/21 160/25 160/25 162/15
173/16 246/3 265/5 272/8
276/17 276/23 276/25
comfortable [2] 55/16 158/10
coming [20] 18/19 25/2 65/8
103/8 164/5 176/25 188/20
191/22 193/6 195/11 195/12
196/16 235/18 251/14 259/21
262/18 263/3 264/2 264/3
271/20
commander [3] 80/2 80/3 85/9

comment [2] 210/15 217/17
commented [1] 261/5
common [2] 154/7 190/21
commonly [1] 142/15
communicate [2] 271/20 271/22
communicated [3] 61/9 175/7
250/1
communications [1] 50/21
Community [1] 241/4
company [4] 1/6 114/4 126/25
247/4
compare [1] 272/12
compared [2] 171/7 210/13
comparing [1] 174/24
compel [1] 101/17
compelled [2] 123/11 123/15
compiles [1] 18/21
complain [1] 34/21
complained [4] 117/10 161/18
261/9 280/7
complainers [1] 54/11
complaining [1] 144/11
complaint [3] 83/6 85/4 85/17
complaints [1] 84/15
complete [3] 97/3 128/6
183/24
completed [1] 93/10
completely [8] 5/25 13/25
50/9 111/20 188/17 188/18
219/12 269/10
completeness [2] 50/2 239/20
complex [1] 41/21
compliance [1] 161/1
complications [1] 131/18
component [1] 45/5
compound [3] 190/7 195/3
240/17
computer [4] 1/24 33/18 33/20
33/22
computer-aided [1] 1/24
computers [5] 23/9 23/10
23/12 23/16 101/11
concealed [1] 141/15
concern [4] 118/6 130/23
139/24 161/20
concerned [11] 6/6 74/20
139/20 148/14 150/2 152/1
152/3 153/24 181/2 181/9
196/8
concerning [1] 189/21
conclude [1] 184/11
concludes [1] 265/18
conclusion [2] 64/4 184/23
conclusions [1] 52/3
condition [4] 40/9 84/13
107/3 177/16
conditions [1] 131/22
conduct [4] 105/12 105/22
257/16 278/4
conducted [3] 50/20 51/7
190/4
conducting [2] 50/18 51/5
conference [1] 244/25
conferences [2] 50/18 51/5
confers [1] 275/5
confidence [1] 50/22
confidentiality [8] 48/15
48/17 48/20 50/11 51/10
51/13 51/14 52/9
confirm [1] 66/16
confirmed [5] 66/13 66/18
66/20 66/21 149/23

confirming [2] 120/12 211/15
conflict [1] 79/7
conform [2] 68/21 75/2
confronted [3] 109/3 116/18
196/22
confused [3] 111/21 237/7
259/17
confusing [6] 36/3 60/3 265/9
265/11 267/22 271/6
confusion [2] 198/1 224/3
Congress [2] 49/21 52/19
Congressional [2] 248/25
249/2
Congressman [24] 30/7 30/10
101/8 101/18 101/19 102/1
102/4 102/7 102/10 102/17
102/19 102/25 103/1 103/15
247/20 248/12 249/3 249/16
250/12 251/20 253/10 253/11
253/11 253/16
Congressman Poe [1] 249/16
connected [2] 12/24 12/25
connection [5] 122/14 199/25
206/20 219/9 261/22
consciousness [3] 84/18 84/18
271/21
consensual [7] 66/19 134/16
134/21 141/10 233/25 234/2
281/19
consent [2] 278/18 278/24
consented [2] 264/23 265/15
consequence [1] 98/24
consider [1] 178/2
consideration [1] 197/21
considered [1] 108/23
considering [2] 40/11 40/12
consistent [6] 51/15 134/19
134/22 163/25 164/9 275/25
consistently [1] 166/18
constantly [1] 38/6
constellation [1] 86/24
Constitution [2] 52/23 101/16
Constitutional [1] 248/17
construction [1] 98/22
contact [4] 21/22 181/10
224/1 241/1
contacted [3] 22/6 28/17
254/9
contacting [2] 228/5 238/1
contacts [1] 159/1
contained [3] 160/13 161/2
238/14
container [3] 19/20 174/20
252/14
contains [1] 160/9
contend [1] 157/7
context [4] 260/23 275/15
275/17 277/9
continue [5] 27/25 87/15
151/7 166/2 264/13
Continued [2] 2/1 10/1
continuing [7] 91/11 134/10
144/13 161/1 194/8 208/7
215/17
contract [5] 48/2 53/12 53/19
190/10 190/17
contracted [1] 275/20
contractor [1] 77/23
contractors [1] 45/16
controvert [1] 52/5
convenient [1] 240/9
conversation [26] 93/18 145/9

conversation... [24] 145/15
 145/19 145/21 146/10 147/21
 147/23 147/24 148/3 149/1
 149/4 149/7 151/3 180/1
 180/10 180/14 180/15 180/19
 181/2 212/20 213/17 219/23
 220/2 220/17 220/19
 conversations [4] 36/18
 180/11 224/16 224/25
 conveyed [2] 111/24 112/24
 convicted [3] 5/6 5/8 5/10
 conviction [2] 4/20 7/1
 convictions [1] 6/14
 Cooper [1] 2/10
 copies [1] 265/25
 copy [8] 77/11 99/24 201/18
 201/20 201/21 265/25 265/25
 267/20
 corner [3] 16/7 76/1 189/23
 correct [108] 11/4 13/23
 16/13 68/24 72/11 73/25
 76/15 76/18 76/24 78/12
 78/19 83/4 85/1 85/22 90/9
 90/15 92/12 95/9 95/23 96/8
 118/25 119/3 123/15 124/13
 124/25 127/4 127/9 132/1
 132/8 135/6 135/25 136/6
 136/24 137/25 138/8 139/9
 140/15 142/10 142/11 142/12
 142/15 143/2 146/9 147/19
 147/25 148/20 150/13 150/19
 152/15 153/4 153/7 153/9
 154/23 156/2 165/10 167/10
 167/21 167/25 169/15 171/20
 172/4 173/8 173/9 173/11
 175/4 175/7 175/8 175/10
 180/17 181/22 182/9 182/10
 183/5 183/20 184/19 185/24
 186/3 186/13 186/14 186/21
 187/3 187/12 188/2 188/22
 194/2 194/3 194/6 195/13
 195/19 205/15 205/18 207/13
 207/14 208/11 209/4 209/22
 210/22 214/24 217/19 221/24
 225/18 225/21 235/8 237/12
 240/22 245/17 279/20 283/4
 correcting [1] 91/25
 corrective [1] 266/13
 correctly [5] 62/21 95/12
 122/16 147/16 165/18
 correspondence [1] 9/3
 corroborates [1] 268/23
 corroborating [1] 73/7
 Cosmetic [1] 240/18
 could [99] 8/23 25/20 28/16
 30/15 30/15 30/16 32/12
 32/13 35/6 37/6 50/11 52/1
 52/17 58/18 60/21 66/16
 67/22 68/19 76/9 77/4 80/16
 82/17 85/3 85/15 87/15 88/19
 88/24 90/3 90/24 91/9 93/16
 94/10 95/16 95/21 95/25
 98/12 99/24 103/7 106/6
 107/12 113/24 114/1 117/3
 117/25 122/25 125/15 130/14
 134/1 143/18 144/3 148/15
 152/14 153/5 153/8 153/9
 155/5 162/1 169/10 169/20
 170/2 170/5 176/3 182/17
 185/7 188/10 197/25 198/22

199/6-203/2 204/6 213/11
 220/12 220/14 220/17 220/20
 223/13 223/20 224/2 224/15
 224/25 225/9 226/7 228/23
 235/3 239/19 240/4 240/15
 248/1 251/5 251/6 254/19
 261/4 261/19 267/15 269/5
 269/8 269/23 277/13 277/23
 couldn't [16] 28/10 29/9
 31/19 31/20 40/14 48/20
 104/13 108/24 151/16 183/4
 221/5 228/6 238/3 264/22
 265/14 276/19
 counsel [14] 5/23 10/11 46/5
 61/9 67/2 67/4 135/18 192/18
 262/5 263/5 263/19 273/23
 279/14 279/19
 counseling [1] 204/3
 counselors [1] 95/23
 counter [1] 8/1
 counterclaim [1] 5/4
 country [9] 11/6 11/9 20/21
 32/5 33/3 63/8 182/21 194/6
 204/9
 couple [25] 8/22 9/11 10/22
 39/13 40/3 57/6 67/3 67/4
 67/5 68/12 69/10 95/14
 110/16 131/4 159/23 164/22
 171/15 198/11 200/25 203/10
 218/21 218/24 232/20 259/1
 279/8
 course [9] 46/25 47/1 107/12
 142/19 142/21 193/25 225/16
 266/22 277/3
 court [48] 1/1 2/12 2/14 5/22
 46/4 47/24 59/11 60/23 61/8
 61/11 67/17 68/10 74/25
 101/13 101/24 102/15 106/4
 160/11 162/11 163/5 163/8
 164/4 164/8 164/18 176/7
 176/8 176/18 198/18 225/23
 226/21 232/6 242/6 253/10
 253/18 263/4 263/25 272/18
 272/22 274/19 276/20 277/8
 278/13 278/15 279/21 281/18
 281/19 283/3 283/9
 Court's [11] 8/10 8/21 68/5
 68/22 74/24 75/2 244/18
 244/25 277/24 279/16 279/18
 courtesies [1] 109/7
 courtroom [4] 62/9 91/12
 94/18 104/22
 cover [2] 164/22 202/7
 covered [6] 45/24 46/18 46/22
 56/22 74/15 280/5
 coworker [1] 204/19
 coworkers [2] 161/17 161/18
 CPO [8] 92/4 92/20 92/21
 93/6 93/8 93/11 93/16 93/17
 crass [1] 19/12
 crazy [1] 117/23
 cream [3] 275/3 275/4 275/5
 credibility [3] 163/15 260/8
 260/10
 credit [2] 238/14 238/20
 cried [2] 31/19 157/21
 crime [5] 5/24 12/24 12/25
 31/23 45/16
 criminal [6] 4/17 6/23 7/22
 45/4 45/6 103/19
 cross [14] 4/12 8/20 52/6
 61/18 71/12 83/20 242/10

242/12 244/4 244/20 245/9
 249/21 254/21 264/1
 cross-examination [4] 4/12
 61/18 71/12 249/21
 cross-examine [1] 8/20
 crosses [2] 242/14 245/6
 crowd [1] 210/16
 crowds [2] 41/6 41/7
 cruiser [1] 7/20
 crying [10] 38/1 79/10 87/1
 88/2 95/11 95/14 156/24
 157/7 157/8 219/18
 CSH [1] 182/24
 CSR [2] 2/13 283/9
 Cullen [1] 2/9
 cumulative [1] 269/17
 cup [3] 208/10 208/14 217/7
 cups [1] 217/4
 curb [2] 187/10 216/12
 currently [1] 158/24
 custody [6] 86/4 86/11 250/20
 250/22 251/13 252/13
 cut [8] 27/16 40/23 62/5
 68/16 70/21 229/4 247/15
 262/1
 Cut and Shoot [1] 40/23
 cute [2] 155/10 220/7
 cutoff [2] 166/3 167/19
 cuts [4] 67/11 111/23 242/14
 246/14
 CV [1] 1/4

D

D/B/A [1] 1/6
 DA [2] 89/6 89/7
 dad [13] 21/13 21/22 22/6
 22/6 22/7 22/13 23/4 23/7
 23/15 26/13 40/6 110/18
 113/16
 daddy [1] 22/7
 Daigle [24] 31/11 41/16 41/18
 77/22 79/2 79/6 79/6 79/9
 79/11 80/11 80/11 83/4 89/3
 89/4 89/4 89/4 89/7 90/1
 90/3 92/22 92/25 93/2 93/9
 93/10
 damage [1] 162/20
 damages [2] 103/21 104/1
 Dan [1] 270/9
 danger [3] 280/17 280/21
 282/18
 dangerous [5] 254/23 255/11
 255/12 256/8 257/25
 dangers [1] 258/8
 Daniel [1] 2/5
 Darington [1] 1/22
 date [12] 82/18 124/9 126/9
 166/3 167/12 167/19 177/7
 190/14 239/2 245/1 279/3
 283/6
 dated [6] 83/2 144/1 168/10
 168/24 189/22 279/1
 dates [13] 90/17 124/22 125/8
 125/9 125/10 126/3 126/3
 128/7 128/8 128/11 130/24
 131/13 166/22
 dating [7] 42/14 42/16 148/24
 149/6 149/19 178/19 206/15
 daughter [8] 31/10 138/3
 141/13 141/13 149/6 150/11
 250/7 250/18
 daughters [1] 149/13

| D Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 295 of 335 | | |
|---|-------------------------------|------------------------------|
| David [2] 190/6 204/3 | deferred [1] 182/22 | designations [3] 241/24 |
| day [44] 7/17 9/15 9/15 31/21 | definitely [6] 125/1 150/5 | desk [1] 230/17 |
| 33/10 65/17 81/8 81/11 81/20 | 197/21 198/1 233/21 257/25 | desolate [1] 54/12 |
| 92/21 95/19 96/17 97/18 | definition [1] 73/9 | despite [1] 89/15 |
| 101/5 101/24 114/14 116/7 | deformity [1] 35/18 | detail [11] 56/3 107/25 |
| 123/21 124/19 128/22 129/3 | degree [2] 116/6 159/12 | 121/14 123/14 149/1 149/3 |
| 129/5 137/14 142/5 144/13 | degrees [1] 19/25 | 151/15 152/9 152/13 196/20 |
| 174/25 179/8 180/20 200/17 | delay [2] 9/15 262/15 | 200/2 |
| 206/18 211/21 225/20 227/7 | delayed [1] 245/8 | details [3] 123/9 147/1 |
| 228/5 231/9 233/15 236/16 | deletion [1] 247/12 | 180/24 |
| 238/22 240/18 246/5 250/23 | deliberate [1] 118/13 | DFAC [2] 26/25 31/2 |
| 256/23 256/23 280/1 | demeanor [2] 15/20 235/4 | diabetes [2] 131/1 131/18 |
| day's [2] 204/6 274/9 | denied [1] 238/1 | diagnosed [9] 38/8 38/14 |
| day-to-day [1] 256/23 | denies [1] 109/4 | 39/16 40/8 40/15 96/7 111/2 |
| days [14] 5/24 11/7 35/17 | depart [1] 221/23 | 144/15 144/18 |
| 42/2 55/16 90/15 96/19 97/8 | departing [2] 225/1 225/1 | diagnosis [4] 38/23 38/24 |
| 107/19 177/8 177/8 182/22 | department [54] 24/15 29/25 | 107/1 111/13 |
| 204/16 245/8 | 30/22 31/17 31/22 32/9 33/13 | diagram [1] 275/16 |
| DC [1] 250/19 | 33/17 85/21 86/5 92/12 99/15 | dial [1] 230/8 |
| deal [14] 25/3 25/22 68/7 | 102/12 118/24 158/20 159/1 | dialed [4] 228/12 228/19 |
| 96/22 103/14 143/3 160/23 | 159/3 159/9 159/22 189/2 | 229/14 229/16 |
| 160/24 161/7 171/4 234/6 | 189/20 190/9 191/4 191/15 | Diana [2] 38/16 96/12 |
| 234/25 236/10 281/16 | 191/19 193/5 193/21 193/24 | Diaz [13] 90/21 92/5 92/8 |
| dealing [2] 70/9 201/3 | 196/7 196/10 196/14 196/18 | 92/19 92/21 93/6 93/8 93/14 |
| deals [3] 50/1 143/2 143/3 | 196/25 198/2 198/6 199/10 | 93/16 93/17 94/9 95/18 |
| dealt [2] 68/5 160/2 | 199/14 199/19 200/18 200/22 | 163/11 |
| Dear [1] 190/2 | 201/3 202/9 203/15 235/24 | Diaz-Pelot [13] 90/21 92/5 |
| death [2] 21/11 32/10 | 236/2 237/10 250/13 250/20 | 92/8 92/19 92/21 93/6 93/8 |
| debate [2] 101/16 248/18 | 250/23 251/16 252/12 252/14 | 93/14 93/16 93/17 94/9 95/18 |
| Deborah [1] 38/17 | 252/22 253/3 | 163/11 |
| debris [1] 13/7 | Department's [3] 177/1 200/23 | did [223] 5/7 5/14 6/23 11/4 |
| decades [1] 111/2 | 250/22 | 11/7 12/1 13/17 16/4 16/11 |
| December [7] 124/24 125/6 | depend [1] 127/23 | 17/7 17/13 17/15 20/7 22/5 |
| 126/1 126/11 127/4 165/1 | dependent [1] 77/22 | 23/15 26/15 27/6 27/8 29/15 |
| 165/22 | depending [1] 195/7 | 30/4 30/12 30/18 31/1 31/8 |
| December-ish [2] 126/11 | depends [1] 263/23 | 32/1 32/5 32/21 32/23 33/3 |
| 165/22 | depo [5] 254/25 255/2 255/3 | 34/4 34/6 34/14 34/19 34/20 |
| decent [1] 132/18 | 264/25 273/20 | 34/25 35/15 35/20 38/20 39/2 |
| decide [2] 52/25 56/11 | deponents [1] 163/7 | 41/19 42/13 42/16 44/8 44/13 |
| decided [12] 45/9 68/12 68/13 | depos [3] 243/1 257/1 262/19 | 44/17 45/11 46/25 47/2 47/11 |
| 69/10 147/24 178/24 197/20 | deposed [1] 248/2 | 47/11 48/5 49/17 49/20 52/21 |
| 227/16 227/17 227/22 239/15 | deposition [32] 6/13 75/15 | 53/4 53/8 53/13 53/18 53/21 |
| 245/1 | 75/19 115/9 122/24 124/23 | 53/23 57/9 57/11 57/17 57/24 |
| deciding [1] 227/21 | 125/5 125/16 125/23 126/8 | 59/10 65/19 66/1 66/5 66/7 |
| decision [5] 49/12 53/22 | 126/13 126/15 126/22 130/8 | 66/18 68/15 70/13 73/21 |
| 104/10 161/14 161/15 | 132/2 136/23 163/6 165/16 | 74/18 76/25 77/4 79/23 81/10 |
| declarant [3] 163/22 164/1 | 166/19 166/25 171/19 177/4 | 81/24 83/25 87/23 89/7 93/6 |
| 164/9 | 229/15 235/5 245/14 258/18 | 93/7 95/1 95/20 95/21 96/20 |
| declarant's [2] 163/24 163/25 | 263/11 266/6 268/9 268/16 | 99/2 102/11 102/14 108/13 |
| declarants [1] 163/8 | 281/19 282/4 | 108/13 114/7 115/16 116/17 |
| declined [1] 80/12 | depositions [2] 244/21 263/14 | 116/22 116/22 117/12 122/19 |
| decorations [1] 29/3 | depressed [1] 42/3 | 123/2 124/4 124/17 125/4 |
| deductible [1] 45/15 | derobe [1] 126/10 | 125/25 128/21 129/2 129/7 |
| deduction [1] 179/14 | descent [1] 236/11 | 133/13 134/1 134/4 137/3 |
| deer [12] 128/13 128/22 129/3 | describe [3] 20/4 146/12 | 137/15 138/11 138/14 141/9 |
| 129/7 155/17 155/18 156/1 | 190/13 | 142/23 145/2 145/9 147/19 |
| 156/6 157/21 168/19 169/5 | described [8] 15/15 51/10 | 148/22 148/25 152/20 154/5 |
| 171/6 | 109/5 141/7 172/7 174/20 | 154/12 155/15 158/4 166/1 |
| defamation [6] 6/10 6/10 6/17 | 196/20 269/22 | 168/20 169/15 178/5 178/17 |
| 7/4 7/6 7/14 | describes [6] 15/19 15/19 | 178/19 178/22 179/11 179/12 |
| defeat [1] 52/16 | 188/16 188/17 188/19 269/21 | 179/17 179/20 179/24 179/25 |
| defendant [5] 2/2 2/8 71/2 | description [9] 185/11 185/23 | 180/1 180/4 180/7 180/8 |
| 160/8 160/15 | 186/2 186/8 190/14 193/18 | 181/1 181/7 181/9 181/24 |
| defendants [8] 1/8 8/19 14/18 | 198/6 199/13 200/7 | 182/25 186/4 187/9 187/9 |
| 71/2 159/21 160/6 247/13 | descriptions [1] 121/21 | 187/12 187/12 187/15 188/7 |
| 254/3 | desensitize [1] 41/3 | 193/22 193/23 194/13 198/2 |
| defendants' [3] 71/7 254/21 | designate [2] 242/10 242/11 | 198/7 199/9 199/14 199/16 |
| 280/19 | designated [6] 244/7 245/21 | 200/10 200/17 203/20 203/23 |
| defense [11] 5/4 42/24 67/12 | 258/16 259/5 259/11 268/2 | 204/1 204/1 204/9 204/18 |
| 67/25 135/17 269/1 275/25 | designation [4] 254/20 262/6 | 205/5 206/10 206/15 207/21 |

did... [47] 207/24 208/3
 208/8 209/15 211/21 212/22
 214/18 215/17 216/4 216/13
 218/10 218/14 218/16 219/13
 220/6 220/18 223/18 223/21
 224/1 228/14 228/20 232/7
 232/10 234/19 235/9 237/13
 242/11 242/17 243/12 244/19
 245/2 246/16 246/18 249/4
 251/24 256/3 256/4 256/9
 256/13 257/20 260/6 260/7
 260/17 268/17 270/1 278/17
 281/21
didn't [96] 11/5 16/14 17/2
 17/16 20/19 25/23 29/6 29/20
 42/8 42/13 48/12 49/7 53/14
 55/22 55/22 58/8 58/11 59/7
 67/12 79/20 87/2 87/6 87/14
 87/17 90/12 94/15 100/18
 103/16 108/14 118/8 122/7
 123/1 130/12 130/17 136/13
 136/25 137/1 137/5 138/1
 138/1 141/13 145/6 146/12
 147/6 147/7 148/9 148/9
 149/10 149/11 149/24 149/25
 151/25 152/4 155/14 160/23
 161/4 170/1 173/4 184/9
 188/3 188/4 188/5 188/6
 193/8 193/10 195/14 197/8
 206/3 219/12 219/20 221/21
 223/1 223/17 225/7 226/5
 230/7 235/21 241/8 241/14
 242/11 243/14 243/16 245/7
 247/24 248/16 251/23 252/1
 257/6 262/19 271/12 271/24
 277/10 277/10 279/16 279/20
 279/23
Diego [5] 73/22 73/24 76/14
 95/22 97/2
difference [6] 156/4 156/8
 171/11 198/4 198/10 199/11
differences [3] 160/4 198/4
 199/11
different [29] 8/5 46/6 47/7
 61/13 61/14 64/10 77/2 89/5
 89/5 108/5 112/15 142/13
 147/10 180/10 180/10 180/11
 184/22 188/18 188/18 196/19
 206/2 206/5 209/25 230/1
 231/5 244/5 256/10 262/2
 264/2
differently [3] 72/10 149/16
 169/2
difficult [6] 96/17 110/1
 110/5 113/9 142/2 166/22
difficulties [1] 130/24
difficulty [1] 107/20
dig [1] 267/21
diminish [1] 6/9
diminished [2] 5/6 104/14
dinner [4] 124/5 124/16
 204/19 204/25
diploma [1] 44/24
direct [20] 9/9 10/2 10/21
 106/16 118/22 128/21 129/2
 159/10 196/20 225/6 242/10
 242/12 244/4 244/20 245/10
 254/21 255/23 267/9 279/14
 279/17
directed [1] 249/16

Directing [1] 237/20
directions [1] 206/5
directly [13] 46/9 109/3
 175/13 175/18 175/23 181/22
 201/3 203/12 211/5 276/21
 277/2 278/23 280/8
directs [2] 242/14 245/6
dirty [1] 28/25
disagree [6] 108/11 110/14
 218/20 268/13 272/6 276/13
disagreement [1] 105/3
discharge [2] 109/23 116/8
disciplinary [1] 266/21
discipline [1] 51/18
disclose [10] 54/18 125/8
 142/22 142/23 145/10 147/7
 148/9 149/10 149/25 150/16
disclosed [8] 54/19 138/2
 138/10 142/24 146/5 147/8
 148/10 148/18
disclosing [1] 233/18
disclosure [2] 152/5 253/21
discovery [2] 245/25 253/21
discreet [1] 55/1
discretionary [1] 132/20
discuss [6] 79/14 224/11
 241/22 263/12 270/8 274/14
discussed [10] 107/9 115/9
 164/25 176/12 178/15 178/18
 220/14 220/20 236/2 259/24
discusses [2] 189/5 259/13
discussing [3] 72/8 98/17
 146/20
discussion [8] 104/25 135/17
 143/11 254/22 255/10 259/12
 262/7 271/3
disease [3] 111/1 148/24
 181/11
diseases [5] 142/3 142/7
 142/22 142/25 149/24
disfavorably [1] 69/20
disfavored [1] 69/18
disfigured [2] 36/25 37/2
disfigurement [1] 34/7
dislike [1] 104/20
dismay [1] 104/20
disorder [12] 34/18 38/9
 38/15 39/7 39/16 40/16 40/17
 96/7 120/4 144/15 144/18
 144/20
disoriented [1] 28/6
dispatch [1] 102/11
dispatched [1] 77/19
display [1] 260/9
displayed [1] 260/13
disprove [1] 255/25
disproved [1] 73/6
disputant [5] 48/17 48/19
 51/12 51/13 51/15
dispute [15] 50/15 50/19 51/6
 51/11 76/16 76/17 76/23
 77/20 83/11 89/11 89/17
 175/13 175/23 176/1 191/2
disputed [2] 160/12 272/10
disregard [1] 14/6
distance [1] 60/15
distinctly [1] 269/4
distraught [2] 268/18 270/2
distributes [1] 216/22
DISTRICT [5] 1/1 1/1 1/11
 2/14 159/25
disturbance [1] 90/11

divide [1] 245/9
division [2] 17/2 180/12
divorce [5] 39/12 40/3 110/6
 110/15 113/8
dizzy [1] 29/9
do [258] 6/15 6/23 6/23 8/9
 10/5 10/6 10/7 10/22 12/8
 13/13 14/17 14/18 15/19 16/8
 16/17 18/6 18/9 19/2 19/9
 19/19 20/16 20/16 20/19
 21/12 22/17 23/9 24/15 24/23
 25/5 25/10 25/16 27/16 28/7
 29/18 29/21 30/1 31/15 32/22
 33/25 34/2 34/14 35/8 36/1
 37/17 38/5 38/24 39/6 40/21
 41/2 41/2 41/9 42/25 43/11
 47/17 48/23 49/17 49/19
 49/20 52/6 52/16 56/6 57/1
 59/6 63/18 64/6 64/16 67/9
 67/18 68/20 70/15 71/18
 71/19 72/3 72/6 72/11 72/13
 72/16 72/16 73/9 73/11 73/16
 74/2 75/1 76/2 76/22 77/1
 78/2 80/25 81/13 82/9 82/14
 82/24 83/7 84/10 85/8 85/10
 88/9 89/17 90/16 90/21 91/24
 93/14 97/9 97/23 101/25
 106/14 106/16 107/2 107/20
 108/11 108/18 110/13 110/14
 111/9 111/16 111/23 112/22
 115/25 116/24 119/19 119/25
 121/3 121/9 122/15 122/24
 123/3 129/20 132/4 132/25
 133/17 133/22 133/25 135/23
 136/20 138/14 138/15 139/17
 140/5 144/11 144/15 146/2
 151/1 151/16 153/14 153/21
 159/6 164/11 165/3 165/18
 168/11 168/12 172/6 172/13
 173/22 175/1 176/25 178/10
 178/15 178/22 179/1 179/4
 179/8 180/9 180/10 181/4
 181/19 181/20 185/12 189/25
 190/13 191/19 199/1 199/8
 201/11 201/19 201/20 207/6
 209/1 209/11 210/8 210/18
 211/4 211/10 212/21 213/18
 215/21 216/6 216/14 217/10
 217/24 218/1 219/24 222/6
 222/14 224/13 224/16 225/3
 226/3 226/4 228/8 230/6
 230/9 230/9 230/10 230/13
 231/17 231/18 231/19 231/21
 232/2 233/6 233/7 233/8
 234/7 234/11 234/12 234/15
 234/20 236/18 236/20 237/22
 238/15 238/16 238/19 239/12
 240/24 241/14 242/11 244/9
 244/21 244/22 244/23 245/10
 247/1 247/2 247/11 248/7
 248/17 248/17 248/24 252/7
 256/3 256/11 256/20 258/13
 260/1 262/12 262/13 262/15
 262/16 262/20 262/22 268/20
 270/17 270/22 271/7 278/2
 278/3
Dockter [3] 38/17 97/2 97/7
Dockter's [1] 98/16
doctor [73] 37/17 38/18 44/2
 44/5 84/7 85/19 87/10 87/12
 87/18 87/19 87/21 87/23 88/6
 88/11 88/14 88/15 89/3 96/12

doctor... [55] 97/11 98/25
 99/1 99/2 106/25 107/21
 110/11 110/17 110/17 112/24
 115/17 116/14 117/8 118/2
 118/2 120/4 120/9 121/24
 122/10 145/13 145/16 145/25
 146/4 146/6 146/8 146/9
 146/19 146/21 147/24 148/5
 148/18 148/23 149/2 150/15
 150/21 150/22 175/16 186/11
 191/14 191/16 191/22 191/25
 193/12 194/9 194/9 194/11
 194/15 197/3 197/6 240/23
 261/8 264/2 264/3 275/23
 276/22
doctor's [5] 118/6 146/17
 151/25 197/6 197/22
doctors [13] 33/25 34/2 34/12
 34/16 39/18 77/3 96/6 108/4
 113/14 120/1 150/22 151/1
 195/17
doctors' [2] 146/22 150/24
doctrine [1] 50/2
document [36] 76/8 82/2 89/19
 90/24 92/12 108/3 108/12
 117/7 120/25 129/20 143/20
 176/19 176/21 176/25 183/8
 184/11 184/18 186/6 192/5
 192/8 192/9 192/11 192/15
 192/20 192/24 202/15 202/19
 203/11 203/12 212/11 240/2
 252/3 253/22 275/17 275/19
 275/21
documentation [1] 6/25
documented [4] 110/17 110/24
 195/12 195/16
documents [12] 74/20 74/21
 74/22 75/5 76/13 106/20
 134/18 134/19 195/8 202/22
 254/7 254/11
Dodie's [5] 155/10 168/20
 169/6 170/3 171/8
does [79] 5/4 13/9 18/16 19/4
 20/25 21/10 21/24 24/11
 24/13 24/18 24/23 25/12
 25/18 25/22 28/22 29/22
 35/19 37/13 38/11 48/15
 48/22 56/2 58/10 58/12 60/7
 60/9 62/9 63/6 64/13 64/18
 67/20 70/2 90/12 105/11
 110/25 138/15 139/4 153/13
 161/7 171/11 183/23 184/7
 184/8 186/11 190/12 190/16
 191/3 200/22 200/23 201/18
 201/21 212/2 222/16 226/12
 226/14 229/16 234/8 234/9
 244/10 246/1 246/3 252/16
 257/16 260/11 260/21 267/25
 268/19 268/25 271/15 275/9
 275/13 275/14 278/5 280/9
 280/22 281/9 281/20 281/21
 282/13
doesn't [42] 7/9 37/24 45/19
 61/5 61/6 62/22 63/7 87/20
 98/17 104/10 112/13 130/12
 149/20 162/16 163/21 163/21
 175/17 176/1 177/18 182/19
 184/15 184/15 186/14 191/25
 192/11 193/7 225/7 246/24
 248/22 249/19 260/14 260/20

266/13 267/2 267/13 271/21
 272/25 274/3 275/24 277/1
 278/17 278/22
dog [1] 42/3
doing [16] 56/11 82/15 135/5
 138/3 153/19 153/20 184/10
 184/18 184/22 243/23 244/14
 244/15 244/17 251/18 256/23
 276/5
domestic [13] 5/15 5/15 5/20
 6/20 76/16 76/17 76/23 77/20
 83/11 90/11 97/19 98/17 99/1
Don [1] 38/16
don't [224] 7/7 8/6 8/7 9/5
 9/12 10/13 12/16 12/19 13/19
 16/13 17/18 17/19 17/19
 19/13 19/14 20/12 21/3 21/14
 22/11 22/16 23/23 25/3 25/7
 25/13 25/25 28/5 28/11 29/10
 29/12 39/17 41/24 43/6 46/4
 47/22 50/6 52/25 54/19 60/4
 60/4 60/25 63/23 64/8 64/20
 66/2 66/2 67/1 67/8 67/10
 67/21 69/25 70/11 74/16
 74/22 79/24 80/7 80/24 81/17
 90/16 94/1 94/10 95/15
 100/17 102/20 104/4 104/11
 104/18 104/19 104/23 106/11
 110/6 111/1 111/13 112/25
 114/6 114/7 115/17 116/23
 121/19 122/8 122/23 123/25
 127/15 129/4 131/15 132/6
 133/23 133/23 134/3 136/12
 137/6 137/17 138/4 138/9
 138/9 139/10 139/16 140/4
 140/4 140/14 140/14 143/3
 143/10 143/13 144/19 147/11
 150/20 151/4 151/13 152/3
 155/2 159/5 159/5 165/21
 166/24 168/22 169/7 169/25
 170/22 172/15 172/25 173/13
 173/14 173/15 173/19 175/19
 176/6 178/9 178/16 178/21
 178/23 179/6 179/19 180/3
 181/5 181/8 181/12 181/14
 182/23 185/4 188/8 190/17
 200/6 201/21 202/16 202/20
 202/24 210/2 210/10 212/5
 212/7 212/13 215/10 215/12
 216/3 216/7 216/8 216/18
 217/6 217/15 218/18 218/22
 218/23 220/12 223/2 225/11
 226/8 226/14 231/23 232/12
 232/12 232/21 234/1 234/16
 234/17 236/8 236/15 236/18
 236/20 237/13 237/13 240/7
 240/16 240/24 241/9 241/17
 243/20 244/15 245/1 245/18
 246/6 247/13 251/21 252/7
 253/2 256/18 257/18 259/20
 261/2 261/13 261/20 261/22
 261/23 262/13 262/16 265/11
 266/19 266/20 266/22 266/24
 267/1 267/20 268/11 269/16
 270/10 270/15 272/5 273/22
 274/24 276/4 276/16 277/18
 278/2 278/3 278/4
done [23] 4/13 4/13 44/2
 47/19 54/21 56/8 57/1 69/11
 82/8 94/18 99/22 99/23
 101/21 138/4 176/16 227/7
 238/21 242/9 248/3 252/1

256/7 256/15 258/5
door [19] 8/4 8/5 18/23 20/2
 20/3 20/3 21/16 21/21 57/16
 79/8 79/10 79/17 153/11
 153/13 185/15 187/20 187/24
 187/25 188/5
door's [1] 259/23
doorknob [2] 21/17 21/19
doors [8] 75/12 152/20 153/5
 153/6 153/11 154/2 154/2
 154/8
doubt [6] 84/3 234/13 246/6
 246/7 250/13 250/14
doubting [1] 111/22
dovetail [1] 226/5
down [87] 7/16 13/13 13/18
 15/12 20/18 31/4 34/19 37/1
 37/12 43/24 56/15 60/22
 68/19 77/5 78/8 79/1 82/20
 84/9 85/5 85/18 85/19 87/4
 87/21 88/3 88/12 88/25 89/22
 95/12 97/4 98/1 99/12 113/21
 114/20 118/22 121/24 124/9
 124/22 125/10 127/14 128/13
 144/4 145/5 145/12 145/25
 146/4 146/6 146/9 150/1
 150/21 150/23 151/1 151/8
 155/6 158/18 162/10 165/6
 183/15 191/21 192/14 194/10
 195/4 195/10 197/1 197/8
 200/25 204/19 207/8 208/7
 209/13 209/18 209/24 210/12
 210/24 213/1 213/16 216/13
 218/4 218/19 221/24 224/14
 238/6 238/21 250/16 263/6
 268/17 269/4 275/6
downstairs [2] 27/13 27/17
Dr [3] 15/19 198/8 198/8
Dr. [72] 10/5 11/16 16/1 16/4
 16/11 16/16 18/18 18/21
 20/14 34/3 34/14 34/16 34/21
 35/8 35/15 35/20 38/17 38/17
 38/18 38/20 39/1 39/5 66/15
 96/10 96/16 96/18 109/8
 109/9 109/15 109/17 109/21
 109/24 110/10 111/8 111/9
 111/18 111/24 111/24 112/3
 112/3 112/9 112/12 112/20
 112/21 113/3 113/3 113/6
 113/11 113/11 143/23 174/17
 175/10 175/13 175/16 175/22
 185/10 185/22 187/23 193/6
 193/17 194/18 196/1 196/9
 196/16 197/2 198/5 199/12
 204/3 222/25 223/4 223/4
 272/19
Dr. Burnett [12] 109/9 109/15
 109/17 109/21 109/24 110/10
 111/24 112/3 112/9 112/21
 113/3 113/11
Dr. Ciaravino [1] 34/14
Dr. Deborah [1] 38/17
Dr. Eisenmann [1] 34/16
Dr. Guest [2] 96/10 96/16
Dr. Guest's [1] 96/18
Dr. Jodi [2] 11/16 175/16
Dr. Lackson [8] 111/18 111/24
 112/3 112/12 112/20 113/3
 113/6 113/11
Dr. Lahiri [3] 35/8 35/15
 35/20
Dr. Manguno-Mire [1] 38/17

| D Case 4:07-cv-02719 Document 305 Filed 06/27/11 Page 298 of 335 | | | 172/17 176/12 193/25 246/5 248/2 | | | emergent [1] 250/5 emotional [2] 117/1 90/1 | | |
|--|---------------------|-------|-------------------------------------|--------------------|--|--|----------------------|--------|
| Dr. Meisner [6] | 38/18 | 38/20 | duty [1] | 69/14 | | emphasis [2] | 45/4 | 266/20 |
| 39/1 39/5 222/25 223/4 | | | dystonic [1] | 117/13 | | employee [1] | 51/17 | |
| Dr. Panakkal [1] | 204/3 | | E | | | employees [6] | 131/22 | 140/11 |
| Dr. Robbie [2] | 109/8 | 111/9 | E-I-S-E-M-A-N-N [1] | 240/18 | | 190/9 190/15 190/21 | 267/7 | |
| Dr. Sabrina [1] | 34/3 | | e-mail [50] | 24/3 24/8 24/8 | | employer [1] | 131/23 | |
| Dr. Scarano [1] | 223/4 | | 24/18 25/14 32/2 35/3 102/5 | | | employment [3] | 55/16 | 131/23 |
| Dr. Scarano's [1] | 272/19 | | 102/7 102/14 129/21 130/3 | | | 139/13 | | |
| Dr. Schulz [20] | 10/5 16/1 | | 130/11 133/8 133/13 135/1 | | | empty [1] | 63/7 | |
| 16/4 16/11 16/16 18/21 20/14 | | | 135/5 135/10 135/21 135/22 | | | encounter [2] | 281/12 | 282/13 |
| 34/21 174/17 175/10 175/13 | | | 136/18 136/21 155/9 157/25 | | | encounters [1] | 145/4 | |
| 175/22 185/10 187/23 193/6 | | | 158/4 165/9 166/5 167/7 | | | end [8] | 4/6 9/14 165/5 184/6 | |
| 194/18 196/1 196/9 196/16 | | | 167/9 167/12 167/21 168/13 | | | 243/14 259/12 280/1 283/1 | | |
| 197/2 | | | 169/16 169/18 169/22 228/6 | | | ended [1] | 165/8 | |
| Dr. Schulz' [6] | 18/18 66/15 | | 231/4 231/10 231/13 231/19 | | | endometriosis [1] | 107/18 | |
| 185/22 193/17 198/5 199/12 | | | 232/14 234/13 234/17 234/20 | | | ends [1] | 270/3 | |
| Dr. Scott [1] | 143/23 | | 238/16 239/5 239/14 239/14 | | | endurance [1] | 115/5 | |
| Dr. Susan [1] | 111/8 | | 245/12 249/23 | | | enemies [3] | 236/16 | 236/23 |
| dragged [1] | 79/13 | | e-mailed [1] | 237/25 | | 237/6 | | |
| drank [2] | 27/8 221/2 | | e-mailing [2] | 158/5 238/12 | | enforce [1] | 266/16 | |
| drastic [1] | 132/4 | | e-mails [18] | 8/19 8/23 8/24 | | engaged [6] | 42/15 42/18 43/7 | |
| draw [2] | 184/22 274/17 | | 9/4 33/22 72/9 128/19 130/8 | | | 127/15 127/20 280/14 | | |
| dress [2] | 259/6 260/6 | | 134/12 135/8 139/10 139/16 | | | English [2] | 22/1 22/2 | |
| dressed [9] | 11/12 18/21 19/24 | | 140/5 140/14 140/15 154/22 | | | enhance [3] | 54/22 63/1 63/7 | |
| 169/1 169/2 259/18 260/18 | | | 168/24 232/20 | | | enhancement [1] | 62/9 | |
| 261/3 261/18 | | | each [7] | 82/9 94/8 110/16 | | enjoyed [1] | 9/22 | |
| dresses [1] | 260/14 | | 113/15 113/16 246/6 246/23 | | | enlarge [5] | 77/8 80/16 156/12 | |
| drill [1] | 110/22 | | earlier [12] | 23/23 55/17 | | 185/7 229/6 | | |
| drink [40] | 17/18 17/19 27/3 | | 59/16 66/15 81/8 81/11 81/20 | | | enough [11] | 17/5 52/13 64/21 | |
| 27/8 27/10 29/1 64/8 64/9 | | | 155/25 157/8 164/24 206/18 | | | 67/11 68/2 103/24 184/14 | | |
| 124/8 178/25 179/17 182/15 | | | 282/24 | | | 193/3 215/15 226/22 261/9 | | |
| 182/17 184/2 185/16 186/20 | | | early [4] | 204/7 223/1 246/15 | | enter [1] | 159/22 | |
| 187/13 187/25 188/21 191/11 | | | 247/21 | | | entering [1] | 60/7 | |
| 193/15 209/25 209/25 210/7 | | | easier [1] | 250/11 | | entire [19] | 50/3 50/5 50/10 | |
| 210/8 213/22 213/25 216/13 | | | East [1] | 45/17 | | 56/7 86/22 87/2 103/6 108/19 | | |
| 216/17 217/12 217/17 217/18 | | | eat [4] | 31/1 31/15 124/20 | | 159/22 161/9 161/11 163/4 | | |
| 217/22 218/3 218/22 218/24 | | | 140/9 | | | 248/6 265/24 271/3 272/14 | | |
| 219/21 220/9 220/25 222/4 | | | eating [1] | 31/3 | | 276/9 278/25 280/6 | | |
| drinking [7] | 78/14 78/23 | | edited [1] | 67/5 | | entirely [2] | 8/5 70/1 | |
| 92/25 93/2 94/4 190/21 | | | educated [1] | 104/6 | | entirety [5] | 50/14 51/21 | |
| 209/14 | | | education [2] | 44/22 44/25 | | 160/20 160/21 166/19 | | |
| drinks [14] | 185/15 214/2 | | effect [5] | 125/23 185/17 | | entitle [1] | 103/23 | |
| 215/21 215/25 216/22 216/22 | | | 185/20 187/15 187/23 | | | entitled [3] | 50/11 126/1 | |
| 217/10 217/11 218/24 275/8 | | | eight [3] | 35/17 38/19 39/14 | | 283/4 | | |
| 275/12 275/23 275/25 276/2 | | | Eisemann [1] | 240/18 | | entry [4] | 96/4 96/18 116/7 | |
| drive [3] | 131/7 131/9 173/4 | | Eisenmann [2] | 34/16 240/14 | | 250/12 | | |
| Driver [1] | 162/21 | | either [30] | 32/12 68/15 68/16 | | environment [1] | 55/10 | |
| driver's [1] | 19/7 | | 69/12 109/15 113/12 122/9 | | | episode [4] | 39/19 106/17 | |
| driving [1] | 122/8 | | 130/11 138/6 143/14 163/5 | | | 275/22 276/9 | | |
| drop [8] | 77/4 78/8 89/22 | | 163/24 165/21 188/7 200/3 | | | equipment [1] | 62/9 | |
| 113/21 114/20 209/13 210/24 | | | 205/14 210/11 236/18 241/7 | | | ER [2] | 94/6 144/14 | |
| 238/21 | | | 241/14 242/12 244/3 244/15 | | | Eric [39] | 57/9 57/15 57/21 | |
| DRP [1] | 50/5 | | 244/20 246/2 247/2 261/15 | | | 57/22 120/18 122/14 122/16 | | |
| drug [6] | 25/2 66/20 180/5 | | 267/13 273/1 273/1 | | | 123/22 123/22 124/11 125/6 | | |
| 237/8 271/17 272/23 | | | electronic [2] | 242/14 246/14 | | 127/3 127/16 127/20 128/25 | | |
| drugged [5] | 17/13 29/9 66/19 | | elevate [1] | 106/12 | | 130/13 132/25 133/1 134/16 | | |
| 198/11 276/2 | | | eliminated [1] | 246/17 | | 135/2 135/6 136/11 137/4 | | |
| drugs [2] | 18/9 272/23 | | ELLISON [2] | 1/10 94/18 | | 137/15 138/8 138/12 139/11 | | |
| drunk [2] | 94/3 178/8 | | Ellison's [1] | 171/18 | | 141/7 141/11 141/20 141/22 | | |
| DS [3] | 191/13 191/15 194/8 | | else [27] | 4/9 19/17 19/21 | | 145/2 147/23 150/12 152/9 | | |
| DS' [1] | 197/5 | | 68/16 70/21 84/8 87/1 110/23 | | | 154/12 165/19 168/10 170/1 | | |
| Dubai [5] | 17/19 64/10 182/19 | | 111/21 123/7 130/19 134/2 | | | Eric's [4] | 128/23 133/9 | |
| 216/18 217/19 | | | 140/9 141/20 151/17 182/1 | | | 136/10 137/21 | | |
| Dubai.' [1] | 27/11 | | 187/14 188/1 193/12 214/21 | | | erroneous [2] | 111/20 114/6 | |
| dude [1] | 236/15 | | 219/19 233/20 240/1 243/16 | | | error [1] | 144/6 | |
| due [3] | 228/22 242/3 275/18 | | 256/4 267/14 269/13 | | | errors [1] | 150/24 | |
| duress [5] | 131/14 131/16 | | else's [1] | 208/24 | | erythematous [1] | 15/5 | |
| 131/17 132/15 132/22 | | | elsewhere [2] | 254/4 269/7 | | escalate [1] | 124/4 | |
| during [16] | 6/13 12/20 39/2 | | embassy [1] | 204/11 | | escalated [1] | 55/13 | |
| 40/4 53/14 53/24 108/17 | | | emergency [3] | 85/9 85/20 86/5 | | escorted [2] | 174/10 182/24 | |
| 115/4 120/6 151/18 153/15 | | | | | | especially [1] | 104/3 | |

| E Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 299 of 335 | | |
|--|---|---|
| essentially [4] 61/1 115/13 193/17 253/9 | evidence [36] 5/19 8/9 8/15 11/16 12/3 13/7 13/7 13/11 50/6 60/1 60/8 64/4 68/9 72/8 73/7 100/9 101/23 163/9 185/6 189/10 198/17 199/21 202/1 219/9 229/9 257/4 257/8 257/16 266/7 266/8 266/10 266/11 267/21 269/22 280/13 281/9 | 168/7 168/7 169/10 176/3 176/4 176/5 178/1 181/13 181/13 181/15 181/16 181/19 183/9 184/25 185/1 188/10 188/13 189/1 189/8 196/6 200/1 201/8 201/9 201/16 201/17 206/24 225/10 228/23 230/21 231/2 231/6 241/14 252/19 274/13 274/17 274/18 |
| establish [2] 169/14 169/16 | evidentiary [1] 68/6 | Exhibit 103 [2] 26/1 225/10 |
| Estefan [2] 1/18 244/12 | ex [2] 136/11 136/14 | Exhibit 105 [3] 14/9 184/25 185/1 |
| estimate [1] 23/24 | exact [4] 178/9 254/7 256/18 262/7 | Exhibit 112 [1] 12/8 |
| et [9] 80/13 80/13 95/9 112/11 112/11 149/22 149/22 190/15 196/17 | exactly [21] 41/24 67/15 112/1 123/6 128/1 135/5 162/10 177/21 196/21 244/2 244/12 248/4 252/23 253/2 266/16 268/14 271/19 276/5 277/11 281/6 281/8 | Exhibit 124 [1] 37/6 |
| et cetera [9] 80/13 80/13 95/9 112/11 112/11 149/22 149/22 190/15 196/17 | exactly -- I [1] 244/12 | Exhibit 130 [1] 17/24 |
| ethics [3] 50/23 50/24 51/16 | exactly page [1] 244/2 | Exhibit 133 [2] 228/23 241/14 |
| ETOH [2] 84/19 84/21 | exam [11] 13/13 13/14 13/15 16/16 16/17 82/21 115/5 117/10 117/15 117/18 182/22 | Exhibit 137 [3] 48/8 51/22 51/22 |
| evacuated [1] 194/5 | examination [16] 4/12 9/10 10/2 11/11 34/20 61/18 71/7 71/12 106/16 128/21 159/18 168/21 196/20 206/20 249/21 255/23 | Exhibit 168 [1] 35/6 |
| evaluate [4] 34/5 34/6 34/9 127/23 | examine [1] 8/20 | Exhibit 2 [1] 135/4 |
| evaluated [1] 109/21 | examined [4] 10/4 146/24 191/10 241/6 | Exhibit 251 [1] 168/7 |
| evaluation [1] 39/3 | example [3] 163/11 271/20 272/1 | Exhibit 3 [2] 129/20 133/4 |
| evaluative [2] 162/12 162/12 | Excellent [1] 282/22 | Exhibit 43 [1] 10/18 |
| even [57] 5/5 11/5 16/14 25/3 28/10 29/20 42/2 51/14 53/14 56/9 57/23 60/24 110/12 111/13 114/8 121/19 122/7 137/6 140/4 150/25 151/18 156/17 159/17 163/1 164/4 178/23 181/8 186/4 186/5 187/14 193/8 194/11 196/4 196/5 196/5 196/5 198/12 198/16 208/13 223/24 232/12 235/21 237/13 237/13 244/8 252/5 254/1 261/6 261/12 266/6 270/11 270/19 271/19 271/22 278/1 278/16 282/1 | except [6] 64/22 87/3 164/6 195/18 252/18 281/11 | Exhibit 52 [7] 10/11 10/19 176/3 176/4 181/15 188/10 188/13 |
| evening [13] 169/22 169/24 169/25 190/5 190/22 203/14 204/19 205/11 205/22 209/2 209/5 214/18 235/6 | exception [3] 161/23 163/22 177/18 | Exhibit 55 [3] 24/4 24/5 26/4 |
| event [14] 82/10 84/19 102/8 121/23 165/9 166/6 167/7 168/15 177/16 188/18 206/6 214/6 214/17 282/16 | excision [1] 247/5 | Exhibit 56 [2] 231/2 231/6 |
| events [16] 6/5 73/14 73/16 115/22 115/23 175/23 185/23 195/7 195/9 198/6 199/13 205/11 218/2 225/21 228/3 251/14 | excited [4] 37/15 37/16 37/20 38/2 | Exhibit 69 [3] 189/1 196/6 200/1 |
| eventually [2] 25/17 140/12 | exclamation [3] 133/9 135/2 155/10 | Exhibit 7 [3] 135/9 135/11 135/13 |
| ever [28] 16/4 16/18 32/1 36/10 39/10 39/15 40/8 48/1 49/14 54/5 56/8 61/12 61/14 64/21 94/18 94/19 161/7 176/18 198/3 198/7 199/10 199/14 199/16 216/21 248/12 251/20 272/11 279/22 | excluded [1] 8/20 | Exhibit 78 [3] 56/13 56/14 59/18 |
| every [16] 7/17 22/16 24/1 40/22 40/24 56/8 56/8 58/16 94/8 108/11 110/9 123/21 137/14 202/16 202/18 219/15 | exclusive [1] 49/13 | Exhibit 91 [2] 34/23 35/3 |
| everybody [12] 4/2 4/4 4/9 48/22 48/23 70/2 101/7 105/25 229/13 229/17 252/16 274/15 | exclusively [1] 7/14 | Exhibit 98 [1] 176/5 |
| everybody -- okay [1] 229/17 | excruciating [1] 56/3 | Exhibit B69 [1] 189/8 |
| everyday [1] 12/21 | excuse [10] 10/18 14/3 61/20 87/17 91/6 119/7 124/7 149/15 251/16 280/14 | exhibits [9] 12/5 67/5 67/17 100/21 154/13 168/3 231/5 241/15 241/18 |
| everyone [6] 9/21 141/20 158/2 209/13 240/12 271/22 | excused [1] 262/23 | exists [1] 82/9 |
| everything [27] 6/8 11/18 18/22 20/18 44/5 70/21 82/19 85/4 87/1 94/13 97/4 110/23 111/6 123/7 130/19 140/9 | excusing [1] 176/16 | expect [1] 136/13 |
| | exhibit [105] 10/11 10/14 10/17 10/18 10/19 12/8 14/5 14/7 14/8 14/9 17/24 24/4 24/5 24/7 26/1 26/2 26/4 34/23 35/3 35/6 37/6 48/8 51/22 51/22 56/13 56/14 58/19 58/20 59/8 59/13 59/14 59/18 63/4 63/5 63/6 65/5 65/10 67/12 67/25 68/13 68/13 68/17 68/19 68/22 69/11 74/2 75/16 76/10 80/20 90/6 91/20 105/2 105/6 105/13 106/20 118/14 119/8 119/14 119/21 126/20 129/12 129/16 129/20 133/4 135/1 135/4 135/9 135/11 135/13 | expense [2] 132/20 132/20 |
| | | expenses [1] 70/22 |
| | | expensive [1] 132/16 |
| | | experience [1] 154/8 |
| | | experienced [1] 131/21 |
| | | expert [2] 261/14 265/3 |
| | | explain [6] 148/5 176/7 196/15 198/3 199/11 204/9 |
| | | explained [5] 49/14 93/8 197/1 224/15 224/24 |
| | | explanations [2] 72/11 117/4 |
| | | explicit [1] 62/23 |
| | | explore [1] 109/7 |
| | | exposed [4] 20/15 30/20 56/4 56/7 |
| | | express [2] 164/1 164/10 |
| | | expressing [1] 104/19 |
| | | extension [2] 170/13 170/20 |
| | | extent [5] 101/17 177/25 247/2 247/4 247/11 |
| | | external [1] 51/8 |
| | | extraordinary [2] 101/15 101/15 |
| | | extreme [1] 132/22 |
| | | extremely [2] 110/7 279/17 |
| | | eye [1] 156/23 |
| | | eyes [6] 13/19 80/9 89/8 90/2 157/8 157/22 |
| | | F |
| | | fabrication [2] 164/2 164/11 |

| F Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 300 of 335 | | |
|---|---|--|
| <p>fabulous [1] 41/17</p> <p>face [15] 32/25 33/1 37/23 49/17 53/13 77/25 81/15 86/3 86/10 86/15 86/16 86/19 89/20 90/2 157/17</p> <p>faced [1] 104/22</p> <p>facilitation [3] 66/20 237/8 272/23</p> <p>fact [60] 6/13 8/13 12/22 36/1 39/6 46/18 49/2 60/18 61/5 78/3 79/12 83/25 102/11 102/13 111/17 111/24 112/23 114/12 116/11 116/22 120/3 120/5 122/1 150/18 162/23 162/25 163/10 163/13 163/14 178/18 187/7 187/9 193/11 193/25 194/17 194/21 195/24 197/2 197/23 202/9 214/13 220/19 251/11 251/12 252/18 253/21 254/7 260/6 264/21 266/6 266/14 267/2 268/4 269/1 269/20 272/6 272/24 278/23 281/16 281/17</p> <p>facts [9] 253/24 254/1 255/25 266/7 267/21 269/3 269/12 280/4 282/12</p> <p>factual [3] 160/13 162/5 162/18</p> <p>failed [2] 133/22 241/3</p> <p>failure [1] 266/16</p> <p>fair [9] 95/2 98/21 114/16 135/4 184/23 193/3 218/4 238/8 238/10</p> <p>fairly [6] 152/9 152/13 153/12 166/14 191/3 220/2</p> <p>faith [1] 51/19</p> <p>fake [1] 171/14</p> <p>faking [3] 115/14 116/5 116/5</p> <p>Falanga [4] 35/8 35/9 35/16 198/9</p> <p>fall [4] 120/9 131/12 131/13 163/8</p> <p>falling [1] 122/4</p> <p>false [1] 7/12</p> <p>falsifiable [6] 72/14 72/14 72/16 72/20 72/24 73/4</p> <p>falsified [1] 73/1</p> <p>familiar [1] 78/16</p> <p>family [6] 20/22 41/9 55/17 113/13 113/14 131/21</p> <p>FAP's [1] 93/10</p> <p>far [10] 40/22 46/20 60/22 87/3 110/21 126/23 150/18 164/21 214/25 257/13</p> <p>fashion [4] 35/19 78/4 116/2 116/15</p> <p>faster [1] 199/2</p> <p>father [8] 23/19 41/17 109/15 113/7 128/23 249/14 250/14 250/17</p> <p>fault [4] 49/7 68/14 93/25 162/21</p> <p>faulting [1] 244/9</p> <p>favor [2] 52/12 111/23</p> <p>FBI's [1] 190/3</p> <p>FCRR [2] 2/13 283/9</p> <p>fear [1] 24/11</p> <p>features [1] 110/12</p> <p>February [9] 128/17 128/20 131/25 154/22 155/8 168/24</p> | <p>169/18 169/22 170/2 federal [10] 49/24 60/1 80/10 80/10 81/5 81/6 81/8 189/21 191/20 196/4</p> <p>feel [12] 21/10 30/12 41/10 55/12 55/15 56/2 56/4 56/4 121/16 140/10 140/23 164/13</p> <p>feeling [4] 30/19 31/8 182/20 227/21</p> <p>feelings [1] 41/4</p> <p>feels [1] 55/2</p> <p>feet [1] 10/7</p> <p>fell [2] 37/1 122/9</p> <p>fellow [1] 233/25</p> <p>felt [9] 20/15 24/1 28/15 29/8 29/10 60/16 109/22 227/16 239/10</p> <p>female [11] 38/18 79/8 81/5 84/14 85/20 144/10 182/13 183/14 194/15 197/23 218/13</p> <p>fever [7] 40/13 107/19 108/13 108/16 108/25 115/17 116/6</p> <p>few [14] 39/14 44/23 55/16 71/20 75/9 85/24 157/21 204/12 211/3 213/8 214/8 214/12 214/14 214/15</p> <p>fiancee [2] 42/22 43/6</p> <p>fibrous [1] 36/5</p> <p>Fifth [1] 159/25</p> <p>fight [5] 52/21 70/12 70/16 70/18 70/23</p> <p>fighting [4] 40/5 110/16 113/14 113/15</p> <p>fight [1] 245/25</p> <p>figure [6] 40/14 59/20 107/1 122/10 132/12 219/7</p> <p>figuring [1] 17/11</p> <p>file [7] 5/22 64/21 67/17 90/12 103/6 248/6 254/4</p> <p>filed [8] 9/18 16/14 58/5 58/6 59/11 101/8 117/7 134/8</p> <p>filing [1] 54/21</p> <p>fill [2] 180/23 261/13</p> <p>filled [2] 186/1 186/11</p> <p>fills [1] 185/10</p> <p>final [4] 49/11 177/1 201/6 217/21</p> <p>finally [5] 27/6 55/4 94/6 117/8 196/24</p> <p>financial [5] 131/14 131/16 131/17 132/15 132/22</p> <p>find [14] 5/1 6/25 22/11 44/8 63/5 84/14 108/24 121/15 125/20 151/12 152/14 155/18 212/21 216/20</p> <p>finding [4] 162/18 162/23 162/24 269/24</p> <p>findings [7] 115/5 118/13 160/13 162/6 162/6 162/13 162/21</p> <p>finds [1] 149/19</p> <p>fine [9] 44/5 69/5 99/9 102/24 104/22 236/13 262/4 270/6 271/23</p> <p>finger [1] 13/6</p> <p>fingers [1] 216/5</p> <p>finish [8] 9/9 13/14 13/15 83/13 114/9 197/13 197/14 270/7</p> <p>finished [2] 151/21 278/13</p> <p>fire [5] 80/10 80/10 81/5 81/6 81/8</p> | <p>fired [3] 57/22 58/3 130/17 firefighter [7] 17/21 28/6 28/21 64/8 187/18 207/22 255/9</p> <p>firefighters [10] 17/17 27/2 27/5 27/9 27/14 28/3 29/2 64/7 191/10 254/24</p> <p>fireman [1] 265/2</p> <p>firemen [9] 179/12 182/14 182/18 184/1 188/20 195/19 256/19 256/20 258/11</p> <p>firing [1] 113/23</p> <p>Firm [1] 1/15</p> <p>first [89] 5/10 6/4 10/21 12/6 18/16 20/16 20/17 23/15 26/19 28/16 28/23 29/6 31/10 34/4 34/14 35/15 36/16 37/14 37/14 41/22 42/17 48/1 55/16 61/22 62/1 68/12 69/10 71/3 82/18 95/6 95/13 97/22 98/5 98/10 99/5 103/22 107/6 107/13 112/6 124/18 124/23 125/5 127/3 127/15 127/19 129/14 135/15 150/16 151/19 151/24 159/2 160/19 163/19 164/25 169/12 169/20 172/21 173/7 176/22 184/3 185/2 190/16 195/12 198/11 198/15 208/4 208/5 208/9 211/6 212/22 213/20 217/10 217/12 221/16 221/17 222/4 224/24 229/10 231/10 243/8 245/5 255/16 262/9 262/19 263/17 265/24 267/19 279/9 280/11</p> <p>first-born [1] 31/10</p> <p>firsthand [1] 101/20</p> <p>fit [2] 56/25 75/9</p> <p>five [27] 28/20 87/13 88/1 90/14 97/8 107/14 161/17 161/18 179/12 181/3 185/14 187/12 187/23 188/6 191/10 191/22 193/6 193/12 194/18 195/19 196/16 212/20 212/23 214/15 225/12 239/25 245/8</p> <p>five-minute [1] 212/20</p> <p>fix [3] 23/10 23/16 67/8</p> <p>fixing [1] 23/11</p> <p>flashback [3] 64/17 64/18 64/20</p> <p>flashbacks [1] 96/17</p> <p>flip [2] 232/14 258/9</p> <p>floor [3] 2/6 11/17 249/4</p> <p>Florida [3] 6/1 6/2 6/24</p> <p>flows [1] 269/20</p> <p>fluid [1] 108/6</p> <p>fly [2] 98/11 98/12</p> <p>FMLA [2] 131/19 131/20</p> <p>focus [2] 116/13 140/13</p> <p>focused [1] 171/6</p> <p>Focusing [1] 213/16</p> <p>fog [1] 180/16</p> <p>folks [2] 72/21 153/12</p> <p>follow [5] 19/2 20/1 62/7 73/9 148/12</p> <p>followed [7] 61/12 61/14 61/22 62/24 79/17 119/24 121/22</p> <p>following [11] 28/18 54/25 60/18 88/23 92/21 93/19 105/21 107/17 128/24 202/8 271/17</p> <p>follows [1] 113/6</p> |

| F Case 4:07-cv-02719 Document 305 Filed 11/14/12 Page 301 of 335 | | |
|---|--|---|
| <p> Foo [4] 249/16 249/16 250/1 251/9 food [5] 21/4 25/21 25/23 29/16 31/6 foot [1] 26/25 Footnote [1] 160/8 Footnote 2 [1] 160/8 force [3] 42/4 124/15 124/16 forced [3] 171/16 197/3 248/24 foregoing [1] 283/4 foreign [2] 20/21 22/2 forensics [1] 45/5 foreplay [1] 171/21 forever [2] 22/16 24/2 forge [1] 230/14 forget [2] 215/5 225/24 forgot [1] 65/5 forgotten [1] 43/20 form [7] 51/18 68/19 78/4 116/2 186/6 186/7 186/8 forth [3] 18/24 244/17 271/19 forthcoming [1] 219/15 forthright [1] 6/16 forward [1] 245/4 forwarding [1] 136/5 found [13] 7/1 16/18 16/20 16/23 16/24 45/12 84/12 108/6 124/3 126/5 160/11 162/8 162/18 foundation [12] 45/8 45/8 45/11 45/14 47/1 47/2 52/23 56/18 56/20 57/2 201/25 255/24 four [17] 41/17 120/25 121/4 155/25 156/4 156/8 182/14 184/1 187/12 187/23 188/6 188/19 188/19 195/11 195/19 245/20 245/23 four-hour [1] 156/8 four-page [1] 120/25 fours [2] 277/3 280/4 fourth [3] 11/10 65/23 65/24 frame [7] 126/1 127/18 130/25 165/1 165/3 165/20 218/16 frames [2] 128/13 219/6 frankly [3] 258/20 269/7 279/24 frantic [1] 219/18 fraud [1] 46/9 freak [1] 29/2 freaked [2] 21/20 145/12 Frederick [1] 57/13 free [2] 121/17 158/19 frequent [1] 119/22 frequently [2] 7/15 40/21 Friday [2] 190/5 190/22 friend [10] 8/21 28/10 41/9 43/17 105/20 114/13 155/10 218/12 235/8 235/14 friends [6] 8/23 9/1 42/14 114/1 156/17 206/13 front [23] 19/6 19/23 47/8 49/21 49/22 52/19 52/21 52/24 53/1 68/1 74/2 75/11 110/17 113/14 117/23 151/13 156/18 185/4 188/14 210/16 266/20 274/3 277/18 frustrating [1] 278/1 fulfilled [1] 140/25 </p> | <p> full [6] 87/14 129/5 245/2 245/2 245/3 245/3 full-time [1] 87/14 fully [1] 94/13 funded [1] 56/20 funds [1] 57/1 furnished [1] 5/22 further [8] 37/12 100/7 105/2 113/6 116/11 127/24 199/16 224/16 furtherers [1] 56/4 </p> <p>G</p> <p> Gabe [5] 24/4 32/7 32/18 263/18 263/20 Gabriel [2] 263/21 263/22 gait [1] 115/7 Galleria [1] 40/23 game [3] 242/15 245/15 247/9 gang [2] 64/2 64/6 garments [1] 11/22 gastric [5] 131/2 131/4 131/15 131/25 132/3 gather [2] 20/18 215/15 gathering [15] 4/9 186/19 187/7 187/10 194/21 195/25 196/11 196/19 206/8 209/4 211/16 219/9 228/17 235/19 236/3 gave [23] 16/1 23/13 25/2 67/4 67/4 89/4 91/20 148/12 187/13 187/25 191/4 191/24 196/10 200/7 217/10 217/11 218/3 220/9 225/8 245/21 272/1 273/21 274/1 Gelford [1] 85/10 general [8] 174/22 205/11 237/12 238/4 238/8 260/24 270/12 273/8 generally [10] 69/18 119/19 143/4 172/14 172/17 175/14 175/15 210/13 210/14 281/9 generate [1] 111/3 genital [4] 142/15 171/25 171/25 275/1 genital-to-genital [1] 171/25 gentleman [2] 85/10 263/18 gentlemen [3] 68/11 131/20 272/23 genuine [1] 157/18 get [99] 4/4 4/18 7/1 12/19 13/7 18/21 19/5 19/15 19/21 20/22 22/12 25/21 25/21 25/23 29/16 30/15 30/15 31/1 31/22 32/12 33/25 34/3 37/15 37/20 38/2 42/1 45/1 45/3 45/9 46/11 52/21 53/15 58/19 58/19 62/2 63/9 67/23 67/25 71/9 79/7 80/20 80/23 87/13 87/22 87/25 90/11 91/24 94/11 95/21 100/18 102/12 104/15 113/17 118/23 119/7 120/8 121/3 123/9 124/7 125/12 131/1 133/1 135/6 142/3 142/9 142/24 147/6 147/13 148/9 151/11 152/25 153/3 153/7 158/8 163/21 171/1 178/5 180/24 181/14 183/7 186/6 206/4 207/7 217/11 221/15 224/21 230/14 232/2 233/13 233/20 234/1 236/8 242/7 249/17 251/17 </p> | <p> 259/12 264/1 268/9 277/20 gets [6] 21/17 31/6 42/10 95/15 205/8 253/3 getting [14] 21/20 29/12 31/8 40/2 40/2 67/6 76/13 80/25 105/1 139/20 176/8 214/12 227/6 277/21 GHB [1] 272/20 girl [3] 21/7 22/9 110/23 Girl Scout [1] 110/23 girlfriend [23] 6/21 28/20 123/5 123/13 123/16 123/23 124/11 133/15 137/15 137/16 139/25 178/19 209/3 218/13 219/21 220/15 221/5 235/18 235/21 235/22 237/3 239/9 239/11 girlfriend' [1] 236/12 girlfriend's [1] 155/14 girls [2] 234/11 236/6 give [23] 21/1 22/5 23/24 25/5 25/7 25/8 25/9 25/16 25/20 37/20 44/13 53/5 53/8 65/19 66/1 73/15 83/19 178/24 195/22 197/3 200/17 219/15 271/21 given [9] 63/1 91/19 111/17 144/19 198/6 199/13 220/25 251/6 272/9 gives [3] 16/2 117/15 175/15 giving [2] 238/8 253/4 glance [1] 202/7 glaring [1] 202/17 glass [2] 205/6 208/10 glimpse [1] 64/19 go [132] 12/6 20/1 20/3 20/4 20/16 20/22 21/16 21/16 24/7 25/21 27/5 27/6 27/23 30/16 30/17 31/21 32/6 33/25 37/17 37/22 37/25 38/4 40/21 40/22 40/24 42/4 42/6 46/21 47/8 48/11 49/22 50/11 53/22 54/19 54/20 55/4 55/9 56/2 57/2 59/24 60/21 69/1 71/4 75/16 76/7 76/20 77/9 77/25 88/17 89/21 90/20 92/11 99/15 100/2 101/1 104/10 105/1 106/6 108/10 114/25 116/7 117/17 117/17 120/21 121/16 124/15 124/16 124/19 126/7 129/7 129/12 135/8 135/20 140/8 151/10 151/15 152/6 152/7 152/24 153/2 155/20 155/23 156/7 159/6 164/22 169/20 170/5 170/12 170/16 176/5 176/17 181/13 185/2 192/24 197/13 197/13 197/15 197/18 203/2 207/4 207/8 213/1 220/18 221/17 224/9 224/22 226/7 227/25 228/1 231/3 231/6 234/3 236/5 237/15 237/17 239/19 240/4 242/13 242/17 243/12 247/18 251/10 251/17 254/24 255/11 256/2 263/25 264/7 264/12 265/18 267/5 280/11 goes [20] 5/2 5/3 9/19 13/18 86/6 108/20 109/2 109/21 195/19 210/3 214/6 214/23 219/20 221/22 227/15 239/25 257/20 260/8 260/10 260/23 going [133] 4/4 4/9 5/11 6/10 </p> |

| | | |
|--|---|---|
| going... [129] 7/3 8/14 18/6 19/9 19/16 22/11 30/8 33/11 40/25 42/25 46/15 46/17 46/20 46/21 46/22 52/2 52/20 53/5 53/8 56/21 60/6 60/12 67/7 68/18 71/19 71/20 71/24 74/7 74/7 75/1 75/4 76/22 77/1 77/4 82/8 82/8 82/9 85/8 87/20 96/4 98/9 99/15 101/1 106/8 106/11 115/16 115/19 115/22 119/11 120/22 122/7 123/9 125/8 125/9 130/13 130/21 134/10 134/12 137/1 137/24 138/9 138/11 142/1 142/1 142/2 146/20 148/8 149/21 150/12 151/15 151/16 152/2 153/6 163/22 167/12 174/24 176/15 176/17 178/2 178/18 183/2 185/3 188/10 188/25 192/16 196/21 201/17 206/13 211/5 211/24 213/13 215/2 215/16 216/4 224/9 224/10 224/12 232/9 232/14 236/1 237/2 245/13 246/15 247/1 247/8 248/12 249/12 249/13 251/20 254/13 257/25 260/6 262/21 263/14 263/15 265/16 265/18 266/23 269/1 269/13 270/3 270/4 272/21 273/1 274/21 274/22 277/20 279/11 279/17 gone [13] 16/21 16/22 38/3 38/7 42/1 54/15 103/7 139/11 189/4 205/3 230/15 251/9 251/10 good [21] 6/15 7/24 8/16 9/22 51/19 71/14 71/15 80/23 126/25 130/24 139/5 156/15 156/22 170/14 179/4 206/12 234/6 235/7 239/17 255/23 269/5 Goodgine [1] 24/4 goodnight [1] 211/9 Googled [1] 240/16 gosh [1] 105/14 gossip [6] 179/3 232/2 233/13 233/20 234/1 234/6 got [63] 4/8 14/1 21/1 23/11 24/24 26/24 29/1 30/23 34/13 34/13 34/25 37/14 39/12 42/15 43/8 43/23 45/4 45/10 55/25 67/22 74/23 86/2 87/9 111/20 113/15 117/3 118/24 124/21 131/15 139/17 140/3 144/5 147/7 147/9 148/11 155/17 167/15 167/21 167/22 170/2 181/21 212/8 213/21 213/25 216/10 217/16 222/4 226/21 237/11 238/6 241/22 243/12 245/12 248/6 249/25 251/8 260/21 261/11 263/12 264/5 264/7 274/15 279/3 gotten [4] 5/21 40/3 147/8 261/6 government [1] 45/16 grab [1] 116/10 grabbed [1] 116/16 grabbing [2] 216/17 271/12 grade [1] 108/25 grammatically [1] 278/20 | grand [16] 67/7 67/20 99/21 100/3 100/19 242/22 243/15 245/18 245/20 245/23 247/5 247/12 247/16 270/10 270/10 270/11 grant [2] 60/14 103/2 granted [3] 107/11 160/14 241/13 graph [1] 108/19 graphic [1] 152/9 grave [1] 234/3 great [7] 41/16 42/1 42/14 60/13 60/14 152/13 243/14 greater [1] 282/11 Green [2] 58/1 258/8 Greenspoint [3] 18/6 53/4 54/8 greeting [3] 237/12 238/4 238/8 Greg [1] 218/12 grief [2] 139/6 140/22 groggy [1] 179/7 ground [1] 160/19 grounds [2] 159/23 270/16 group [1] 208/9 guaranteed [2] 32/14 32/15 Guarded [1] 15/21 guards [5] 18/23 19/23 22/1 55/14 252/14 guess [10] 4/8 36/4 36/7 39/4 61/4 87/16 96/12 169/7 241/24 264/20 Guest [5] 38/17 96/10 96/12 96/16 96/21 Guest's [1] 96/18 guidance [1] 73/15 guidelines [1] 189/3 guilty [2] 5/14 7/23 guitar [4] 27/1 205/3 205/6 205/12 gun [1] 31/19 guns [2] 19/25 20/2 Gurkha [1] 252/14 gurney [1] 84/25 guy [5] 28/25 42/7 64/10 64/10 220/9 guys [6] 5/11 19/23 20/2 236/8 256/20 265/20 GYN [4] 43/23 143/23 146/24 148/4 | handle [1] 262/19 hands [2] 18/24 216/1 handwriting [2] 27/19 225/18 handwritten [1] 97/1 hang [2] 27/6 213/1 hanging [2] 64/7 212/25 hangover [1] 29/10 hangs [1] 281/18 happen [13] 53/16 61/2 85/10 95/1 116/17 116/22 152/4 172/14 172/17 187/9 187/12 187/16 215/16 happened [57] 6/1 6/2 12/22 16/5 17/2 17/7 17/20 19/10 24/25 26/12 28/13 31/25 33/23 36/24 39/15 45/1 45/3 58/14 73/13 73/16 79/12 83/18 84/9 89/5 94/1 95/2 96/22 114/2 128/15 172/2 179/23 182/2 183/17 188/8 191/17 194/10 194/22 194/23 200/6 207/17 213/2 213/21 213/24 215/6 215/6 219/7 220/23 221/9 221/10 225/4 230/8 235/7 269/6 269/8 276/10 281/6 282/24 happening [4] 41/15 57/21 218/3 266/14 happens [6] 11/14 13/4 18/19 41/22 45/18 125/18 happy [8] 75/22 97/2 167/1 240/3 248/7 262/14 274/22 274/25 harass [1] 266/22 harassed [2] 114/11 114/13 harassing [2] 161/19 266/8 harassment [7] 54/2 105/12 105/22 113/23 160/4 266/12 267/8 hard [7] 52/21 81/24 125/9 126/4 246/1 259/20 279/25 hardly [1] 178/23 harm [3] 280/17 280/21 282/19 has [89] 4/16 6/4 6/18 8/25 14/4 14/18 27/17 33/20 36/13 36/14 36/15 39/6 40/25 42/10 50/9 54/21 60/17 61/11 61/13 69/18 69/21 96/7 101/4 101/7 101/8 102/13 103/6 104/13 109/25 110/9 112/10 114/10 115/15 117/10 117/13 117/15 139/5 139/6 140/21 140/23 140/25 143/8 150/15 150/17 150/17 159/2 159/24 162/8 164/8 166/22 166/22 175/2 175/19 182/21 186/11 192/15 195/9 195/11 195/23 196/16 196/16 209/18 210/12 215/1 216/1 218/4 226/15 229/14 241/5 242/4 243/3 243/7 246/7 248/24 255/21 256/10 258/6 264/6 266/11 268/8 268/16 271/7 271/14 272/11 275/19 278/3 279/24 282/3 282/9 hasn't [4] 14/20 243/2 243/5 248/3 hat [1] 281/18 hate [6] 113/16 125/18 133/25 133/25 234/11 236/6 have [344] |
|--|---|---|

H

H-07-CV-2719 [1] 1/4
habit [1] 163/15
had [317]
hadn't [1] 149/9
hair [16] 28/25 29/18 29/20
29/21 29/21 170/7 170/8
170/10 170/11 170/20 170/25
171/1 171/5 171/6 171/7
175/17
half [6] 201/12 204/16 222/8
250/23 256/19 275/21
Hall [3] 57/17 57/24 266/16
HALLIBURTON [3] 1/6 61/20
250/19
hand [13] 16/7 76/1 103/1
112/16 148/13 148/14 189/23
194/17 201/17 216/14 251/4
272/17 278/10
handcuffs [1] 7/20
handed [4] 17/17 22/6 64/8

| H Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 303 of 335 | | |
|---|------------------------------|------------------------------|
| haven't [10] 103/24 173/16 | 240/14 240/14 240/15 240/15 | 35/22 38/19 40/6 43/22 46/10 |
| 202/16 223/7 223/11 223/14 | 248/13 248/14 248/16 248/20 | 46/17 46/21 46/25 47/1 47/1 |
| 247/14 248/5 256/25 268/11 | 248/23 248/23 248/23 249/4 | 47/6 47/12 47/13 52/4 52/6 |
| having [34] 40/4 42/22 49/6 | 250/4 254/23 256/3 256/3 | 59/23 60/18 61/6 61/14 61/25 |
| 56/7 56/9 70/22 80/20 91/2 | 256/14 256/15 265/10 265/13 | 62/7 62/23 63/7 74/4 79/9 |
| 107/22 107/23 109/24 110/1 | 266/13 267/2 268/16 269/21 | 79/11 81/7 81/7 83/13 83/13 |
| 110/4 112/9 113/18 117/21 | 272/3 272/19 274/1 | 84/16 84/17 85/21 85/24 86/1 |
| 118/6 120/3 120/5 121/22 | he's [29] 21/13 23/20 49/6 | 86/1 86/2 86/3 86/4 86/7 |
| 122/2 122/6 141/7 141/10 | 75/4 86/25 103/24 104/11 | 86/8 86/8 86/9 86/10 89/8 |
| 142/4 145/15 147/15 169/7 | 111/11 111/13 112/22 113/20 | 89/9 90/2 90/2 92/19 92/21 |
| 178/6 181/16 217/18 219/21 | 155/10 166/20 176/15 180/12 | 92/23 93/11 93/12 93/19 99/3 |
| 230/4 271/4 | 194/25 199/15 199/15 223/11 | 99/3 99/16 102/15 102/20 |
| Hawks [1] 33/9 | 247/3 255/9 256/8 256/15 | 102/24 103/6 103/7 103/8 |
| hazardous [1] 7/5 | 263/18 265/2 265/3 267/11 | 108/17 108/22 109/5 109/8 |
| he [275] 4/22 4/23 5/5 5/8 | 269/12 273/25 | 110/1 110/11 111/4 112/13 |
| 5/10 5/14 5/14 6/21 6/22 7/8 | head [12] 19/24 29/18 81/7 | 112/16 112/17 113/6 113/18 |
| 8/4 8/4 8/22 17/17 19/4 19/5 | 81/19 83/7 84/2 84/3 110/23 | 115/4 115/4 115/5 115/5 |
| 22/1 22/1 22/2 22/5 22/6 | 130/18 133/22 172/12 279/24 | 116/8 116/8 116/9 116/11 |
| 22/11 23/8 23/9 23/9 23/15 | headache [2] 107/19 144/13 | 117/12 126/22 126/22 127/5 |
| 23/21 27/10 27/11 28/7 28/8 | headaches [4] 119/22 119/24 | 131/4 131/8 131/25 132/2 |
| 28/8 28/9 28/14 28/16 28/17 | 121/22 144/14 | 132/3 132/4 132/5 137/1 |
| 29/11 31/4 31/4 32/15 33/5 | headnote [1] 248/1 | 137/25 138/2 138/3 138/3 |
| 37/22 37/24 38/22 38/24 39/2 | heal [1] 34/11 | 138/10 139/4 139/12 139/12 |
| 39/3 39/3 39/4 41/16 42/7 | healed [1] 13/25 | 140/13 141/15 141/25 145/1 |
| 42/13 42/13 42/19 42/20 | health [4] 130/21 131/14 | 147/5 148/17 149/5 149/11 |
| 43/17 43/17 55/25 57/13 | 138/2 271/13 | 150/11 151/14 151/16 159/10 |
| 57/13 57/14 58/8 58/8 58/11 | healthy [1] 142/9 | 162/22 163/11 163/14 163/15 |
| 64/8 65/17 67/11 73/20 73/21 | hear [16] 5/17 47/22 48/5 | 166/24 175/18 175/20 176/22 |
| 73/22 73/24 76/25 77/25 | 57/17 57/24 71/1 91/8 140/13 | 182/2 182/13 182/14 182/15 |
| 79/13 80/9 80/10 80/11 83/16 | 147/22 149/5 225/25 257/6 | 182/20 182/25 183/15 183/25 |
| 84/13 85/14 85/17 85/17 | 271/10 271/12 276/11 279/25 | 184/1 184/1 186/5 191/10 |
| 85/19 86/18 87/6 87/7 87/9 | heard [14] 48/7 52/18 54/5 | 191/11 191/11 191/12 191/15 |
| 87/15 88/13 92/23 92/23 | 55/21 55/24 57/13 104/21 | 191/17 201/17 206/2 206/19 |
| 93/24 94/11 94/11 98/8 98/9 | 139/21 240/7 240/14 266/15 | 213/7 220/21 220/22 221/12 |
| 101/4 102/11 104/12 110/20 | 268/6 268/11 281/19 | 225/1 229/15 229/16 235/3 |
| 113/17 113/18 114/1 114/4 | hearing [6] 49/6 51/9 51/25 | 235/4 235/8 235/14 236/1 |
| 114/4 114/4 115/25 117/17 | 72/21 91/2 105/4 | 236/10 236/11 238/12 238/12 |
| 120/20 123/4 123/6 124/3 | hearsay [37] 8/24 47/5 47/9 | 238/13 240/4 241/6 247/21 |
| 124/5 124/5 124/15 130/15 | 47/10 47/15 47/16 47/17 | 248/4 249/9 249/22 250/2 |
| 133/17 133/18 133/22 133/25 | 100/5 100/5 111/12 111/14 | 250/4 250/5 251/2 251/13 |
| 134/22 136/10 138/15 139/4 | 158/22 159/12 160/10 161/1 | 251/14 251/15 251/17 252/3 |
| 139/5 139/6 139/11 139/22 | 161/3 161/8 161/8 161/21 | 252/13 252/13 252/13 252/24 |
| 140/10 140/10 140/21 140/22 | 161/21 162/6 162/13 162/14 | 253/6 253/10 253/18 253/23 |
| 140/24 140/25 145/1 145/3 | 162/22 163/1 163/7 163/20 | 253/23 254/1 254/12 254/13 |
| 145/5 145/5 145/9 146/5 | 163/22 164/5 164/6 178/1 | 255/23 255/24 255/24 255/24 |
| 147/7 147/7 147/8 147/8 | 223/22 223/22 241/25 241/25 | 255/25 259/13 259/15 259/24 |
| 147/21 148/8 148/9 148/9 | 250/9 253/19 | 259/25 260/1 260/9 260/13 |
| 148/10 148/15 148/19 149/10 | Hedges [6] 2/5 2/5 251/3 | 260/14 260/15 260/21 260/25 |
| 149/24 149/24 150/1 150/5 | 253/1 270/9 270/9 | 261/1 261/1 261/7 261/9 |
| 150/6 150/17 151/9 152/15 | Heidi [6] 1/15 30/2 30/22 | 261/13 261/21 261/21 268/8 |
| 152/17 153/5 153/6 153/14 | 31/17 33/16 203/18 | 268/9 268/24 269/5 270/3 |
| 153/14 153/18 153/19 153/19 | held [9] 22/7 88/3 130/18 | 275/23 276/22 278/25 280/6 |
| 153/20 154/5 154/5 155/13 | 133/22 177/23 251/15 267/7 | 281/18 281/19 281/20 282/3 |
| 155/14 155/15 155/21 156/16 | 267/11 271/18 | 282/20 282/24 |
| 156/16 157/24 158/2 158/25 | helicopter [3] 33/5 33/8 | here [128] 6/3 21/8 21/22 |
| 159/2 166/5 167/6 172/10 | 33/10 | 22/10 31/5 31/13 41/15 46/24 |
| 173/16 178/18 178/19 179/2 | hello [1] 237/12 | 53/16 61/2 67/22 67/24 69/25 |
| 179/3 182/5 187/19 190/24 | helmet [1] 44/19 | 74/11 78/2 80/15 89/2 89/14 |
| 190/25 190/25 191/17 194/11 | help [12] 21/23 21/24 45/8 | 90/20 92/17 94/22 99/9 103/8 |
| 197/7 204/21 207/23 212/16 | 45/16 57/2 70/18 132/5 138/3 | 104/15 104/17 107/16 107/24 |
| 213/8 213/17 214/7 214/18 | 153/24 169/4 272/25 282/7 | 108/15 110/10 114/2 115/3 |
| 215/25 216/1 216/3 216/4 | helped [3] 46/16 46/19 46/20 | 117/16 122/5 131/11 133/7 |
| 216/5 216/5 216/10 216/13 | helping [1] 46/8 | 133/10 134/20 136/4 136/8 |
| 216/21 216/22 217/10 217/10 | helps [4] 41/3 41/3 45/8 | 138/25 139/7 139/23 140/12 |
| 217/16 217/17 217/17 217/18 | 256/23 | 145/19 145/23 147/6 147/9 |
| 220/17 220/22 221/24 223/1 | hepatitis [4] 147/4 147/10 | 147/12 147/22 149/12 149/23 |
| 223/1 223/18 223/19 223/19 | 148/8 151/18 | 150/25 151/10 155/3 155/6 |
| 223/21 225/12 225/15 226/18 | her [248] 6/22 6/22 8/22 | 155/8 155/9 160/2 160/5 |
| 226/20 226/20 226/20 226/20 | 13/16 16/13 25/3 25/5 25/7 | 162/21 163/8 163/8 164/5 |
| 226/22 226/24 226/24 227/11 | 25/8 25/16 25/19 25/20 25/24 | 167/5 171/3 171/13 174/24 |

| H Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 304 of 335 | | |
|---|---|--|
| here... [61] 176/8 180/25 183/8 184/9 184/21 186/1 186/11 189/14 191/18 200/2 204/20 205/8 207/6 209/18 210/12 210/22 211/1 211/2 211/7 211/17 212/1 216/20 219/2 221/15 224/15 224/20 226/2 226/6 228/25 228/25 229/3 229/3 229/10 231/10 231/25 233/1 233/12 234/10 234/11 235/17 236/6 246/4 247/18 254/5 254/9 262/13 262/15 266/18 273/7 274/16 276/5 276/10 276/21 277/17 278/20 278/24 279/11 280/9 281/7 281/23 282/7 here's [7] 150/10 247/1 250/12 250/14 263/24 265/25 267/19 hero [1] 31/10 heroes [1] 258/12 herpes [5] 137/18 142/17 148/10 151/18 151/20 hers [1] 242/4 herself [9] 109/23 110/11 113/9 235/4 246/10 252/8 258/7 258/10 259/24 Hey [1] 136/9 hide [2] 38/3 38/4 high [3] 44/23 55/7 248/25 highest [1] 101/22 highlight [24] 77/8 77/12 80/16 82/18 82/19 85/3 85/15 88/24 93/20 97/4 107/13 114/25 138/25 140/19 144/3 155/6 211/18 218/8 221/16 224/17 225/10 228/24 229/4 246/23 highlighted [8] 105/11 107/25 127/2 185/7 224/21 224/24 244/5 264/18 highlighting [2] 48/10 243/3 highly [1] 60/2 him [101] 6/15 19/2 21/14 22/8 22/8 23/10 23/12 23/14 28/14 28/16 28/23 31/11 31/14 33/1 38/25 41/18 41/19 42/8 42/9 42/10 43/8 43/18 58/8 58/11 65/19 66/1 73/25 85/19 86/16 87/14 94/11 94/12 94/15 94/15 94/16 95/21 98/21 101/9 103/20 113/19 123/7 133/14 137/17 141/23 146/12 148/7 149/9 151/8 151/19 153/20 156/18 173/15 173/19 178/6 179/15 179/17 179/25 181/2 181/4 182/2 202/24 203/23 204/19 205/3 205/18 205/20 207/12 209/15 209/20 211/24 212/7 212/16 212/17 212/23 212/25 213/8 214/1 216/17 219/13 220/21 223/2 223/3 223/8 223/9 223/11 223/13 223/20 224/1 224/2 227/12 228/12 228/14 229/14 230/7 238/3 240/24 241/1 248/15 249/5 272/4 274/2 himself [3] 98/20 203/21 272/2 | hire [1] 70/17 hired [4] 39/4 39/5 39/6 39/9 his [96] 4/24 5/6 6/13 6/21 6/25 7/10 28/11 29/6 31/3 32/25 33/1 37/23 38/22 38/24 39/2 42/10 55/25 57/14 69/18 92/22 92/23 93/1 93/3 93/7 103/2 103/22 104/12 104/13 104/13 123/4 123/13 123/16 133/15 133/19 134/23 136/11 136/14 137/16 138/1 139/5 139/12 140/22 140/24 140/25 141/22 147/22 152/11 152/15 152/20 152/25 153/3 156/17 157/19 159/10 172/15 173/13 173/16 177/3 177/10 178/6 178/18 179/14 208/3 208/4 208/5 209/19 213/17 216/5 218/13 219/21 220/6 220/7 220/10 220/15 221/21 221/22 228/17 235/18 236/11 237/3 238/24 239/4 247/4 249/6 250/7 250/18 251/3 263/17 268/15 268/16 271/4 271/4 271/14 272/2 272/4 273/20 Hispanic [1] 218/13 histories [2] 187/22 188/1 history [20] 4/17 6/23 16/8 16/8 84/4 84/6 84/7 85/5 85/18 85/21 103/19 107/17 107/19 121/9 121/11 121/12 175/3 182/7 193/17 281/10 hit [13] 77/24 79/11 79/18 81/7 81/11 81/19 86/3 86/9 87/7 89/16 92/23 93/24 122/8 hitting [11] 42/7 86/2 86/9 86/16 86/19 86/19 87/9 87/23 88/14 95/8 122/8 HIV [1] 147/4 Holcombe [1] 2/4 hold [3] 50/20 88/20 277/12 holding [3] 216/5 216/6 251/3 home [20] 7/19 20/22 22/12 23/10 27/4 30/16 33/25 34/25 93/23 94/11 94/12 94/15 95/21 110/21 129/5 131/19 132/7 137/22 147/17 246/8 home, [1] 77/25 honest [3] 58/16 95/16 219/12 Honor [174] 4/22 4/25 5/13 6/12 6/19 8/1 8/10 8/17 9/5 9/11 9/17 9/25 14/16 14/23 23/2 45/23 46/3 46/7 46/18 47/4 47/5 49/3 49/23 50/6 52/2 56/21 58/18 59/7 59/8 59/14 59/16 59/17 59/23 59/25 60/12 60/20 61/17 61/22 62/14 62/18 62/20 63/2 65/12 66/24 67/19 68/21 69/2 71/4 74/13 91/17 99/7 99/25 100/12 102/2 102/23 103/4 107/8 107/10 111/11 118/16 126/16 127/5 129/23 130/5 135/16 143/16 155/2 158/9 159/8 159/21 159/23 159/24 160/18 161/5 161/6 161/9 161/20 162/1 163/3 163/14 163/18 167/2 168/2 168/4 170/18 176/12 181/17 183/11 184/13 188/25 189/12 189/15 192/4 194/25 195/1 201/2 201/20 202/13 202/15 202/22 | 223/6 230/22 230/25 239/17 239/19 241/10 242/3 242/15 242/17 244/13 244/24 246/16 247/17 249/3 249/7 249/13 249/22 250/11 250/25 251/19 252/2 252/7 252/18 253/5 253/20 254/7 254/16 254/19 257/2 257/11 257/18 258/15 259/1 259/9 262/4 262/8 262/12 262/23 263/24 263/25 265/2 265/17 265/23 265/24 266/2 266/5 266/10 266/24 266/25 267/10 267/15 268/5 268/13 268/25 271/1 271/5 271/11 271/15 272/4 272/5 273/2 273/9 273/13 273/15 274/8 274/14 275/15 276/8 276/12 277/19 277/22 279/2 279/8 282/20 HONORABLE [1] 1/10 hooch [2] 234/24 249/19 hooters [1] 8/13 hope [3] 71/18 99/15 204/11 hopefully [2] 123/14 164/23 hoping [1] 62/2 horrible [4] 125/9 128/15 131/1 148/15 hospital [21] 39/18 40/5 40/13 82/23 85/1 107/12 107/17 108/17 109/17 110/15 114/22 115/4 115/13 119/11 131/7 131/8 131/9 131/9 151/20 227/18 227/23 hospitalized [2] 137/7 137/17 hostile [2] 69/21 265/5 hour [6] 88/6 88/9 106/10 156/8 222/8 222/8 hours [14] 9/11 24/1 27/18 44/23 77/17 78/15 120/20 155/25 159/7 204/10 204/13 204/14 250/23 252/10 hours' [1] 156/4 house [9] 42/2 42/5 50/19 51/6 59/23 61/9 110/19 147/3 249/4 HOUSTON [16] 1/2 1/4 2/7 2/11 2/15 32/4 32/13 32/16 43/23 98/11 98/12 102/22 102/23 158/2 158/3 159/24 how [95] 11/9 15/15 15/19 17/1 17/15 21/10 22/15 23/16 23/23 25/18 26/12 27/3 27/17 29/11 30/6 30/12 33/3 35/15 37/16 37/20 38/14 40/21 41/7 41/19 42/19 46/7 46/16 46/17 46/21 47/11 55/9 55/19 56/2 56/20 64/24 67/8 70/15 72/5 72/5 72/8 73/13 73/13 73/15 82/2 82/13 83/17 115/22 121/3 124/10 129/7 143/1 143/3 146/12 149/9 149/12 151/3 151/23 154/7 159/16 160/8 176/18 186/15 194/23 195/8 206/4 215/21 216/3 216/4 220/15 220/17 220/20 222/3 222/6 222/16 229/25 246/1 246/19 251/5 251/6 254/23 254/23 255/10 255/11 257/20 258/7 259/18 260/12 260/13 263/24 265/13 271/20 272/1 272/8 281/20 281/21 however [14] 6/3 8/24 60/21 |

however... [11] 62/3 69/19
 103/21 105/21 115/6 131/16
 136/25 140/5 160/1 236/10
 282/16
 HPV [7] 137/7 142/12 142/14
 147/9 148/10 151/18 275/20
 HR [2] 33/6 33/13
 HSV [4] 142/12 142/17 147/9
 275/20
 huge [1] 278/25
 huh [14] 66/14 92/16 97/13
 173/21 175/11 216/25 220/4
 221/25 225/17 225/22 231/16
 232/3 236/17 264/23
 Huh-uh [1] 173/21
 Hultz [2] 18/25 19/5
 Hultz's [1] 19/8
 human [2] 45/2 142/14
 humiliating [1] 42/19
 hundred [7] 64/25 108/18
 116/6 165/13 165/15 166/8
 277/7
 hundreds [1] 152/1
 hung [1] 27/6
 hungry [2] 31/2 124/19
 hunt [3] 128/14 128/22 155/18
 hunting [3] 129/3 156/1 169/1
 hunts [1] 129/7
 hurry [1] 96/2
 hurt [3] 13/16 80/12 273/1
 hurting [6] 20/23 25/1 25/2
 30/16 34/8 34/22
 hurts [1] 20/18
 husband [49] 37/16 37/22
 41/16 41/16 55/15 73/19
 76/15 76/24 77/3 77/24 78/12
 78/23 79/1 79/17 81/7 81/11
 81/19 84/16 85/21 86/1 86/1
 86/4 86/8 86/8 86/11 86/14
 86/15 86/18 86/23 86/25 87/8
 87/18 87/19 87/21 87/22
 88/13 90/7 90/14 93/22 94/14
 94/23 95/8 95/15 98/4 98/18
 98/19 142/20 142/21 142/24
 Hypercholesterolemia [1]
 107/18
 hypervigilance [3] 41/4 41/5
 41/8
 Hypothetical [1] 195/2
 hypothetically [1] 233/24
 hysterical [4] 84/23 86/24
 88/9 95/10
 hysterically [2] 88/1 95/14

I

I'll [28] 4/13 7/3 30/2 60/14
 63/9 75/22 77/15 89/22 96/1
 97/2 103/2 125/20 147/11
 149/15 154/25 167/1 176/22
 203/3 203/10 207/6 230/23
 247/15 247/16 248/7 258/25
 264/14 272/25 282/25
 I'm [206] 4/4 4/8 5/11 6/6
 7/3 8/2 10/13 11/23 14/16
 14/24 20/12 20/17 20/17
 20/21 20/21 20/23 20/23 21/6
 21/11 21/19 21/20 21/21 22/7
 22/10 22/11 25/1 25/2 27/3
 31/5 34/15 37/18 38/2 39/23
 40/19 40/25 43/20 46/17 48/9

48/9 48/11 49/5 52/2 55/7
 56/21 59/6 59/7 63/10 83/10
 63/10 64/9 67/10 67/12 67/23
 67/24 68/25 71/2 71/24 74/20
 75/1 75/13 76/13 78/8 78/9
 79/15 80/25 82/8 82/9 83/12
 86/24 87/20 88/20 89/13
 90/23 92/7 97/25 99/7 104/6
 105/1 106/11 110/7 111/15
 111/22 112/2 112/3 114/1
 116/4 116/22 119/11 121/1
 122/4 122/4 124/9 125/4
 125/8 125/8 125/9 126/3
 126/23 128/8 128/20 130/13
 130/24 134/6 139/23 139/23
 144/12 148/25 149/12 150/25
 151/11 151/11 153/17 153/23
 155/19 156/10 159/17 160/24
 165/15 166/7 166/7 166/8
 166/11 166/21 167/12 168/1
 168/8 170/24 171/6 173/5
 175/14 175/16 176/15 176/17
 177/13 179/6 179/15 179/25
 180/24 181/16 183/18 185/25
 186/15 187/21 192/16 193/11
 197/18 202/5 202/21 206/5
 208/21 208/22 213/13 216/20
 218/23 219/2 219/5 220/11
 220/11 223/15 224/10 224/11
 225/24 226/8 226/13 227/1
 227/4 227/6 232/5 233/4
 242/20 243/3 244/9 244/15
 246/8 248/9 250/17 253/17
 254/17 254/17 255/1 257/6
 259/16 260/12 261/14 261/15
 265/3 265/16 266/23 266/25
 267/9 270/3 270/4 270/4
 271/11 271/24 272/16 273/1
 273/10 274/17 275/21 278/12
 279/21 280/2 281/3 282/2
 282/6
 I've [27] 22/7 23/25 36/12
 40/18 45/10 45/22 54/25 56/8
 68/12 69/10 104/11 108/3
 126/5 127/2 136/11 156/24
 173/13 192/2 192/12 197/9
 225/4 244/8 263/4 275/7
 279/13 279/24 280/3
 IAD [1] 160/3
 idea [10] 27/17 69/17 81/13
 192/6 222/9 222/10 234/7
 234/20 236/20 258/3
 identical [1] 195/18
 identifiable [1] 63/8
 identified [1] 46/15
 identifies [2] 83/4 84/14
 identify [2] 154/17 177/22
 if [270] 6/8 6/19 7/5 7/23
 7/23 8/4 8/22 10/14 11/20
 13/20 14/20 15/11 15/12
 25/19 25/20 25/25 26/21 28/7
 31/13 32/4 35/6 41/8 41/9
 43/6 47/18 49/10 50/10 50/11
 53/5 53/8 54/14 54/19 56/10
 56/10 56/25 60/4 60/4 60/17
 60/18 62/9 63/9 69/20 71/18
 71/24 73/14 75/4 75/22 75/25
 76/5 76/9 77/4 78/8 82/17
 85/3 85/7 85/15 87/19 88/5
 88/19 88/24 89/2 89/11 90/6
 90/23 90/24 92/1 92/7 93/16
 95/15 97/3 97/25 98/3 98/16

101/13 102/2 102/16 102/18
 102/21 103/19 104/21 105/9
 106/6 106/7 107/6 107/12
 107/25 108/9 108/15 108/19
 112/5 112/5 112/12 119/14
 120/10 120/11 120/19 120/22
 120/23 121/5 121/14 121/17
 121/19 122/14 125/15 125/23
 126/12 127/24 127/24 130/17
 131/11 132/2 133/18 133/22
 134/1 134/3 134/22 136/17
 138/3 138/9 138/10 139/11
 139/23 140/6 140/18 140/18
 141/5 141/9 141/13 143/5
 143/18 144/3 146/8 146/18
 146/20 147/4 147/8 148/10
 149/1 150/20 151/6 151/10
 151/17 153/6 153/17 153/19
 153/24 154/14 155/5 155/23
 156/23 157/2 157/2 157/12
 158/10 158/10 158/19 159/23
 162/1 162/17 162/17 164/7
 165/17 166/11 169/10 169/18
 169/20 169/25 170/5 170/12
 170/16 170/20 171/3 173/16
 173/16 175/17 175/22 176/3
 179/15 181/8 183/18 184/9
 184/15 184/17 184/25 185/6
 186/4 186/5 187/22 188/10
 190/24 190/25 192/21 194/17
 194/21 196/6 197/5 197/19
 199/2 201/12 202/1 203/2
 203/21 204/6 210/24 211/18
 211/24 212/25 213/7 213/11
 215/18 218/8 218/19 218/23
 219/2 224/21 225/9 226/5
 226/7 228/17 228/23 229/4
 229/6 231/11 231/24 232/19
 233/24 233/24 236/20 237/17
 237/25 238/6 240/4 241/8
 242/6 245/16 247/14 247/15
 247/22 250/23 253/6 253/8
 253/23 254/19 255/22 256/11
 256/17 258/23 260/23 261/3
 261/22 261/25 261/25 262/9
 262/19 263/25 264/21 264/21
 265/18 267/15 267/20 270/11
 270/17 272/18 273/17 273/19
 273/23 276/18 277/23 278/8
 281/21
 if -- I [1] 60/18
 III [1] 136/6
 Iler [64] 57/22 115/21 118/24
 120/18 122/14 122/17 122/19
 123/4 123/12 123/22 124/23
 125/6 125/24 127/4 127/16
 127/20 129/8 132/25 133/1
 133/13 134/16 135/6 137/4
 138/8 138/12 139/22 141/7
 141/11 141/20 141/22 142/2
 145/2 146/1 147/2 147/15
 147/18 147/21 147/23 148/2
 148/15 148/17 148/22 150/12
 152/9 152/10 152/14 153/13
 154/12 154/22 155/9 157/5
 157/13 157/23 165/1 165/7
 165/8 165/19 168/10 168/13
 168/13 169/14 169/24 170/1
 171/17
 Iler's [10] 57/9 57/15 123/23
 124/11 129/1 130/13 137/15
 139/11 139/24 172/6

| I Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 306 of 335 | | |
|---|-------------------------------|--------------------------------|
| ill [2] 130/21 131/14 | indication [1] 146/16 | internet [7] 57/2 57/6 6/7 6/8 |
| illicit [1] 18/9 | indications [1] 86/12 | 6/17 7/6 7/12 |
| illness [9] 40/14 85/18 | individual [7] 28/16 48/17 | interns [1] 104/17 |
| 106/17 106/21 106/24 110/12 | 48/19 51/12 51/13 178/1 | interpretation [2] 98/22 |
| 118/11 121/9 121/12 | 180/4 | 135/4 |
| image [1] 62/15 | individuals [6] 80/8 80/13 | interpretations [1] 134/15 |
| imagine [2] 149/4 153/24 | 178/7 181/4 204/12 211/9 | interprets [1] 195/8 |
| imagined [1] 107/3 | inducement [1] 46/9 | interrogatory [1] 253/25 |
| immaterial [1] 178/2 | inexpensive [1] 132/23 | interrupt [2] 49/5 271/24 |
| immediate [1] 14/6 | inference [1] 60/9 | intervening [1] 230/12 |
| immediately [1] 19/21 | inferences [2] 271/8 271/8 | interview [7] 159/11 159/13 |
| imparted [1] 111/7 | influence [5] 164/2 178/24 | 201/4 204/2 208/8 209/19 |
| impartial [2] 50/18 51/5 | 199/23 231/20 237/7 | 215/1 |
| impeachment [2] 164/8 166/17 | influenced [1] 116/1 | interviewed [5] 158/23 162/20 |
| imperfect [1] 91/12 | inform [2] 204/1 259/15 | 193/20 203/14 214/11 |
| implants [4] 36/11 133/1 | information [38] 7/11 11/3 | interviews [3] 159/3 159/11 |
| 260/15 261/6 | 61/18 65/19 66/1 81/13 81/21 | 162/7 |
| implication [1] 243/17 | 82/11 82/13 86/20 99/19 | intestinal [1] 131/3 |
| implicit [1] 259/23 | 111/7 111/16 111/24 112/21 | intimidation [1] 55/2 |
| implied [2] 164/1 164/10 | 113/6 113/11 113/12 113/15 | into [56] 4/18 8/15 18/22 |
| implies [1] 218/2 | 113/24 114/6 160/16 175/7 | 19/5 24/7 24/18 26/22 27/2 |
| imply [3] 213/20 214/10 225/2 | 175/15 181/24 183/4 184/12 | 34/3 37/22 46/12 50/25 60/7 |
| import [1] 218/4 | 186/13 194/1 205/10 206/1 | 60/23 75/4 76/7 78/8 81/3 |
| important [8] 6/3 53/2 53/3 | 219/16 229/2 239/7 239/10 | 86/4 86/11 89/23 99/15 100/2 |
| 177/24 191/8 216/21 217/13 | 251/24 251/25 252/9 | 100/9 105/1 108/6 133/17 |
| 278/16 | informed [9] 89/6 102/13 | 140/6 146/23 151/15 173/3 |
| impression [5] 141/10 161/22 | 106/10 150/17 179/2 206/18 | 176/9 176/17 178/6 189/10 |
| 177/12 177/15 177/18 | 228/4 238/11 239/9 | 197/20 197/25 198/1 198/12 |
| imprison [1] 54/9 | informing [4] 85/25 87/8 | 198/16 199/21 202/1 205/23 |
| improper [8] 60/9 164/2 | 89/15 238/12 | 224/9 236/11 244/20 245/9 |
| 166/12 166/17 166/19 265/9 | initial [5] 190/12 195/9 | 250/20 251/9 251/10 256/2 |
| 271/8 272/13 | 204/1 224/10 261/8 | 257/25 258/2 269/11 269/12 |
| improved [1] 115/4 | initially [6] 11/13 38/18 | 279/17 |
| in-house [3] 50/19 51/6 61/9 | 38/20 55/11 85/25 191/9 | intoxication [1] 279/10 |
| inaccurate [2] 193/8 251/1 | initiating [1] 51/18 | intro [1] 247/14 |
| inaccurately [4] 87/5 115/25 | injured [2] 35/1 257/25 | introduce [3] 62/25 244/8 |
| 116/24 269/22 | injuries [4] 80/9 84/24 89/8 | 247/2 |
| inadmissible [1] 280/12 | 94/7 | introduced [3] 55/17 205/18 |
| inappropriate [2] 69/23 259/7 | injury [3] 64/13 89/7 89/17 | 207/13 |
| inappropriately [2] 260/18 | inner [1] 12/23 | introducing [1] 203/20 |
| 261/19 | inquire [1] 192/17 | introduction [2] 246/18 |
| INC [1] 1/7 | inquiry [3] 106/3 164/17 | 247/10 |
| inch [1] 21/18 | 224/7 | introductions [3] 244/7 244/8 |
| incident [12] 45/14 76/14 | inside [10] 13/8 20/3 20/4 | 244/17 |
| 89/6 92/20 93/3 93/6 96/19 | 20/4 20/5 20/16 79/23 161/16 | intros [1] 244/19 |
| 96/20 98/18 99/1 163/13 | 187/20 195/12 | intuitively [1] 266/19 |
| 278/21 | instance [2] 94/22 95/6 | invective [1] 6/7 |
| include [2] 173/12 265/15 | instances [1] 198/24 | investigate [1] 186/25 |
| included [2] 139/5 140/21 | instead [3] 102/25 121/21 | investigated [3] 57/23 187/3 |
| including [7] 82/20 108/5 | 201/14 | 194/19 |
| 110/1 112/10 123/13 160/20 | instructed [2] 123/11 198/22 | investigating [9] 35/11 89/15 |
| 161/17 | instruction [4] 67/23 67/25 | 162/9 182/8 193/21 204/18 |
| inconsistencies [1] 196/22 | 68/3 68/4 | 204/24 204/25 205/5 |
| inconsistency [4] 56/8 196/8 | instructions [2] 68/12 69/10 | investigation [24] 51/8 92/8 |
| 197/1 199/15 | instructs [1] 11/17 | 92/12 93/10 159/10 160/3 |
| inconsistent [4] 115/6 117/10 | intend [2] 101/25 203/4 | 160/9 160/14 160/21 177/1 |
| 163/24 164/7 | intended [4] 63/3 102/10 | 189/21 190/4 191/20 194/1 |
| incorporated [1] 50/25 | 248/14 263/16 | 194/1 195/21 195/22 195/23 |
| incorrect [1] 188/2 | intent [1] 159/8 | 196/3 196/18 202/10 203/20 |
| incorrectly [2] 62/21 87/5 | intention [2] 57/1 100/1 | 219/10 219/17 |
| increased [5] 70/22 119/22 | interact [1] 7/17 | investigative [3] 72/10 |
| 243/2 243/6 266/17 | interaction [1] 92/19 | 158/20 162/8 |
| incurred [1] 132/21 | intercourse [18] 124/24 125/4 | investigator [4] 89/2 197/1 |
| independent [1] 73/6 | 125/6 125/25 126/11 127/3 | 219/8 238/11 |
| INDEX [1] 3/1 | 127/13 127/21 165/1 165/22 | investigators [9] 88/23 189/6 |
| indicate [6] 102/15 186/12 | 171/24 172/1 190/24 277/2 | 191/5 196/15 198/3 199/10 |
| 186/14 226/2 245/12 264/22 | 278/22 281/15 281/24 282/2 | 203/24 211/21 237/10 |
| indicated [1] 64/2 | interest [2] 85/8 118/12 | invited [1] 206/8 |
| indicates [1] 183/19 | interested [1] 232/10 | involuntary [2] 142/10 279/11 |
| indicating [8] 22/4 32/19 | internal [4] 51/8 160/3 160/8 | involve [2] 76/13 282/13 |
| | | involved [11] 25/8 30/8 92/8 |

| I Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 307 of 335 | | |
|--|---|--|
| involved... [8] 93/3 124/12 139/22 171/23 196/4 226/21 239/11 253/3 involvement [2] 25/13 171/25 Iraq [29] 14/1 32/15 34/8 39/11 39/15 44/9 44/17 44/21 53/13 53/22 53/25 54/3 54/6 65/23 73/16 93/3 96/23 115/21 157/23 159/2 159/3 172/19 190/8 233/15 235/6 239/9 250/21 272/7 275/22 irrelevant [1] 178/2 is [574] is -- I [2] 46/15 275/15 ish [2] 126/11 165/22 isn't [28] 7/22 39/22 61/21 69/7 92/9 98/21 113/24 141/3 146/18 154/3 166/14 196/1 196/6 196/11 196/14 196/20 196/24 197/4 214/15 218/3 220/3 226/19 227/19 254/2 254/14 256/21 269/22 282/1 isolated [2] 45/13 277/23 issue [45] 4/15 4/16 6/20 8/13 8/17 8/18 46/4 46/7 46/12 59/4 59/6 59/7 75/5 97/19 99/14 102/3 102/4 103/18 103/22 104/7 105/8 105/9 110/24 118/7 118/7 118/8 141/22 160/10 161/7 162/2 198/17 199/24 226/8 241/24 247/20 247/24 253/20 254/20 261/12 271/13 272/10 272/17 273/10 274/16 278/4 issues [14] 40/4 72/4 72/5 72/6 86/24 100/5 107/17 131/5 132/4 132/5 138/2 148/13 190/13 241/22 it [736] it's [239] 8/14 9/1 10/11 10/14 10/22 14/5 14/20 14/25 15/23 18/13 21/20 24/4 24/5 33/4 33/4 33/7 33/9 38/1 40/19 43/19 45/14 46/3 46/6 46/8 46/10 46/12 47/9 47/9 47/18 47/19 47/19 47/20 48/9 48/9 49/13 49/25 50/1 50/6 50/11 55/24 56/15 56/25 59/7 59/7 59/14 59/15 59/17 59/22 60/4 60/5 60/6 60/13 60/14 60/17 60/20 62/12 63/7 64/19 68/1 68/14 73/2 74/19 74/19 76/10 83/2 86/23 89/18 91/11 95/15 96/22 99/5 101/10 101/12 103/7 103/12 105/6 105/9 105/11 105/12 105/14 106/25 111/25 112/19 114/8 125/9 126/15 126/22 128/10 130/3 130/13 134/7 135/4 156/4 156/6 156/23 157/1 157/1 157/13 157/14 157/15 158/10 159/24 160/5 162/7 162/9 162/10 162/11 162/12 162/19 163/1 163/20 163/20 163/21 166/18 169/9 171/13 171/13 171/14 175/9 176/18 177/16 183/12 184/21 185/6 186/7 188/13 192/14 193/19 195/3 195/10 195/23 201/10 201/10 202/15 206/12 213/15 | 215/4- 220/12 223/23 223/24 225/20 227/24 228/25 236/16 237/19 239/17 240/7 241/3 241/7 241/9 242/12 244/1 244/1 244/12 246/7 246/11 246/24 247/5 247/8 248/8 250/9 250/11 252/19 252/20 252/23 253/2 253/22 254/3 255/5 255/6 255/17 256/5 256/14 256/16 256/16 256/19 257/9 257/15 257/21 257/21 258/2 258/9 259/7 259/8 261/16 261/23 264/15 264/16 264/25 265/5 265/8 265/9 265/11 265/12 265/25 267/10 267/21 267/25 268/1 268/8 269/17 269/18 269/19 270/11 270/11 270/17 271/3 271/6 272/11 273/3 273/4 273/18 273/20 275/6 275/11 275/17 276/16 277/3 277/11 277/24 277/25 278/8 278/22 278/24 279/2 279/25 280/3 280/4 280/6 280/7 280/15 280/19 281/11 281/12 281/13 281/14 281/15 281/15 282/14 it's just [1] 269/18 Item [10] 185/10 207/4 211/17 213/3 217/21 218/6 221/15 228/1 237/17 238/21 Item 10 [1] 237/17 Item 15 [1] 238/21 Item 26 [1] 185/10 Item 5 [1] 207/4 Item 6 [1] 211/17 Item 7 [1] 213/3 its [11] 50/16 101/24 160/19 166/19 271/25 279/9 280/16 282/5 282/6 282/11 282/12 itself [3] 62/11 63/6 159/13 IV [1] 2/9 J Jackson [1] 111/8 Jaguar [3] 132/15 132/16 132/19 James [1] 38/16 JAMIE [137] 1/3 10/1 10/4 10/21 11/14 11/25 12/8 12/10 13/5 14/11 15/4 15/20 16/5 16/13 16/16 17/1 18/6 18/18 19/4 19/9 19/19 20/4 20/9 20/24 20/25 21/9 21/10 21/15 21/24 22/8 23/4 23/18 23/23 24/9 24/11 24/20 24/23 25/16 26/7 26/21 27/15 27/17 27/22 27/25 28/18 28/22 28/24 29/1 29/1 29/4 29/15 29/18 29/22 30/8 31/6 31/9 31/16 32/5 32/11 33/3 33/11 33/13 33/18 33/25 34/6 34/12 34/25 35/2 35/4 35/18 35/23 36/10 36/21 37/9 39/5 39/15 40/7 40/16 41/8 42/16 43/5 43/20 44/13 44/21 44/25 45/7 45/11 45/12 45/14 45/21 46/2 48/1 48/18 49/14 51/25 52/15 53/4 54/5 54/14 54/21 55/10 55/17 56/2 56/17 56/17 56/20 56/25 57/2 58/12 63/16 64/21 65/1 66/12 70/6 70/12 77/22 77/23 83/4 102/12 116/9 139/4 186/23 | 190/6 192/22 197/24 236/13 249/15 249/19 249/25 250/2 252/20 252/24 263/25 268/17 268/17 269/2 270/2 Jamie's [1] 249/14 January [4] 128/16 136/19 137/20 139/9 jealous [1] 43/8 jeans [3] 20/13 179/9 179/10 Jennifer [4] 136/15 139/10 139/19 140/6 Jenny [3] 249/15 249/16 250/1 jeopardizing [1] 131/23 Jimmy [2] 208/20 208/24 Jo [1] 41/18 Joanne [1] 2/3 job [12] 32/14 32/15 130/18 133/18 133/25 139/25 140/7 152/15 226/16 256/7 257/19 259/14 Jodi [2] 11/16 175/16 Joe [1] 247/3 join [2] 206/8 208/9 joined [1] 73/20 joining [1] 23/15 joint [37] 10/11 10/14 10/16 10/19 12/5 12/8 14/9 14/23 15/4 17/24 24/4 24/5 26/1 26/4 34/23 35/3 35/6 37/6 48/8 51/22 56/14 59/16 63/4 181/13 181/15 183/10 184/25 185/1 188/13 225/10 228/23 230/21 231/6 241/14 241/15 241/17 252/19 joke [1] 27/11 joked [1] 182/18 joking [3] 185/16 188/21 265/3 JONES [140] 1/3 4/18 5/7 6/4 8/6 8/20 8/22 8/25 9/23 10/1 15/22 22/21 59/22 60/10 61/3 61/12 61/19 62/4 71/14 71/24 74/11 75/15 76/7 76/22 77/23 78/2 80/14 81/17 82/4 82/7 89/10 94/17 94/21 106/6 106/7 106/9 106/14 107/16 110/4 111/6 112/5 123/20 131/11 132/6 134/3 134/6 135/25 143/6 143/20 150/4 151/11 154/15 158/23 159/4 163/12 164/20 167/5 167/18 168/7 168/17 176/25 187/21 189/6 190/7 190/9 190/22 190/23 190/25 191/9 191/13 191/15 192/24 195/7 196/24 197/12 198/2 199/9 201/4 207/7 209/13 211/2 213/6 213/8 214/25 217/22 218/25 219/8 222/24 224/9 224/15 224/24 227/16 228/3 228/4 228/5 228/22 229/9 229/14 231/13 238/11 238/13 239/9 239/25 242/4 249/14 249/17 249/19 250/4 250/14 250/15 250/17 251/6 251/12 251/15 252/23 253/3 253/11 253/18 255/22 256/9 256/10 258/6 259/24 259/24 260/6 260/25 261/5 261/8 268/6 268/8 271/18 272/6 274/14 275/19 275/23 275/25 276/1 276/21 279/13 280/24 |

| | | | | | | | | | | | |
|---|--|--|---|--|--|--|--|--|------------------|--|--|
| J Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 308 of 335 | | | 83/15-83/17 83/22 86/25 89/18 89/22 90/23 92/7 92/11 60/25 61/1 178/10 192/25 | | | Kelly [12] 1/14 1/15 9/24 199/3 227/2 264/21 268/19 274/2 | | | | | |
| Jones' [9] 125/15 229/20 241/23 250/9 258/9 259/6 261/7 268/23 278/16 | | | 96/22 97/25 103/9 103/14 103/16 111/6 111/15 111/25 112/2 112/2 113/17 114/9 114/12 115/20 117/1 118/21 120/10 121/7 125/10 125/16 127/17 128/6 128/11 129/9 134/4 138/22 146/8 147/13 148/11 148/12 149/8 150/8 151/6 151/14 151/16 151/25 152/3 154/21 155/12 159/12 159/25 160/24 162/1 162/24 165/16 166/16 168/1 168/18 169/7 169/25 170/24 170/25 171/15 171/25 174/24 175/18 180/22 180/24 182/2 183/18 184/17 188/11 189/12 192/7 192/7 192/24 197/19 200/1 201/25 206/3 207/8 209/18 211/1 212/1 215/14 216/8 216/20 217/13 222/23 224/17 226/5 229/2 229/3 229/19 232/1 232/17 233/24 236/10 236/13 236/25 237/7 237/11 242/5 242/12 242/15 243/1 243/12 243/21 243/21 244/1 245/14 246/8 246/11 248/6 254/5 254/19 255/17 256/23 257/21 258/2 258/9 261/18 262/18 262/23 263/23 265/9 266/3 267/20 269/18 270/23 271/20 271/22 273/8 274/11 274/22 276/14 277/12 278/4 279/7 280/20 281/11 | | | Kelly's [5] 60/23 186/18 206/20 234/22 273/18 | | | Kempsta [1] 31/4 | | |
| Joseph [2] 41/16 92/20 | | | | | | kept [7] 9/7 9/8 19/17 132/25 141/15 147/1 147/2 | | | | | |
| judge [48] 1/11 4/7 4/8 4/15 7/14 8/14 14/3 14/12 47/18 67/22 68/18 71/10 74/6 74/23 74/24 81/1 83/14 94/18 95/1 99/17 100/1 100/8 100/21 104/11 105/2 111/25 161/4 161/5 171/18 176/7 177/23 177/25 201/16 223/23 241/1 241/2 243/17 248/13 248/15 255/21 259/22 261/15 263/3 263/12 266/1 275/6 277/1 282/2 | | | | | | Khalid [5] 204/20 204/21 204/22 205/1 205/12 | | | | | |
| Judge's [2] 243/8 246/17 | | | | | | Khalin [1] 204/20 | | | | | |
| judgment [1] 103/24 | | | | | | kick [1] 87/6 | | | | | |
| July [14] 122/18 122/23 132/7 132/9 132/13 190/5 190/22 203/14 211/21 218/2 221/19 225/20 237/22 281/16 | | | | | | kicking [1] 86/17 | | | | | |
| July 27 [1] 190/22 | | | | | | Kimberly [1] 264/11 | | | | | |
| July 28th [1] 203/14 | | | | | | kind [20] 42/8 57/6 83/15 93/7 102/3 104/2 113/24 115/19 125/1 141/6 150/1 160/2 205/8 206/19 212/13 217/7 236/15 238/8 256/13 256/22 | | | | | |
| jumbled [1] 205/8 | | | | | | kindly [2] 75/25 76/5 | | | | | |
| jump [1] 215/7 | | | | | | kinds [2] 101/25 150/24 | | | | | |
| jumping [2] 215/4 215/13 | | | | | | kit [7] 11/15 16/17 18/22 18/24 19/8 190/3 190/12 | | | | | |
| Jumpy [1] 41/6 | | | | | | kiwi [1] 31/3 | | | | | |
| JUNE [3] 1/5 166/2 283/6 | | | | | | knew [34] 17/11 28/15 30/6 30/7 30/17 33/1 37/16 37/20 37/23 43/17 93/1 98/24 137/5 137/6 137/24 138/3 138/9 138/11 138/13 141/22 141/23 172/8 194/19 204/11 204/12 207/22 221/10 221/11 226/20 226/20 235/22 235/24 236/1 276/5 | | | | | |
| jurisdiction [1] 226/20 | | | | | | knock [1] 188/5 | | | | | |
| jurors [1] 49/6 | | | | | | knocked [3] 185/14 187/20 187/24 | | | | | |
| jury [104] 1/10 4/10 9/13 9/15 9/20 14/6 22/22 22/24 22/25 47/9 49/18 50/3 50/13 52/22 52/24 56/11 56/25 58/23 58/25 60/9 63/11 63/12 63/13 67/8 67/20 68/1 68/1 69/14 72/3 72/23 73/11 76/7 78/9 84/5 91/1 94/25 99/10 99/11 99/21 100/3 100/3 100/19 100/25 101/4 104/10 104/15 105/24 106/1 106/2 106/23 110/25 118/12 121/14 124/10 126/1 158/15 158/16 164/15 164/16 165/6 166/20 169/23 176/17 176/23 186/18 199/7 201/2 208/1 222/17 222/22 224/4 224/5 224/6 226/25 229/19 240/1 240/10 240/11 242/22 243/15 245/18 245/20 245/23 247/5 247/12 247/16 247/19 247/25 256/15 258/2 260/23 261/16 262/16 263/3 266/20 269/23 270/10 270/10 270/11 271/6 272/9 272/23 274/4 280/7 | | | justice [2] 45/4 45/6 justify [1] 101/15 | | | know [178] 4/15 6/16 7/10 7/22 13/19 13/20 17/7 17/13 17/15 19/10 20/19 22/16 23/23 23/25 25/13 25/25 27/16 28/22 29/6 32/21 32/23 34/25 35/9 36/1 36/6 37/14 37/17 38/24 42/25 45/7 55/25 56/2 58/5 59/7 60/4 60/4 60/18 60/23 63/23 66/2 67/8 67/9 70/20 71/16 72/16 74/16 74/22 83/11 84/21 88/1 89/18 94/10 95/15 102/20 108/4 108/7 110/6 110/13 111/16 111/23 112/23 112/25 113/17 114/6 114/8 121/19 122/7 123/25 126/9 127/15 132/2 133/16 133/16 133/23 133/24 134/3 136/12 136/14 137/1 137/3 137/5 138/1 138/1 138/4 138/9 138/9 144/11 144/19 146/12 149/8 149/9 150/20 150/22 151/4 151/13 151/14 154/12 155/13 155/15 155/21 157/24 159/5 159/5 161/13 167/14 168/22 169/25 170/25 172/10 172/15 172/25 173/13 175/17 178/16 181/8 182/23 184/15 184/15 188/8 190/17 192/3 195/15 197/19 198/14 200/6 202/23 202/23 206/4 206/15 208/3 212/22 216/3 218/18 218/21 218/23 221/21 222/6 226/23 226/24 232/12 234/17 235/21 236/15 | | | | | |
| jury's [2] 107/9 125/21 | | | K | | | | | | | | |
| just [201] 4/8 6/17 6/23 7/1 10/21 13/13 13/14 13/15 13/15 15/23 18/23 21/14 22/7 23/4 23/8 23/14 26/3 26/13 31/25 36/6 37/24 38/7 39/12 40/3 40/7 40/11 40/12 40/14 42/7 43/8 43/18 43/18 44/23 45/1 46/25 48/12 50/13 52/20 59/8 60/24 61/8 61/22 62/22 63/7 64/19 64/19 68/13 68/14 68/21 69/24 71/5 71/6 71/9 75/12 76/16 79/15 80/18 80/21 82/19 83/11 83/12 | | | K-H-A-L-I-D [1] 204/20 Kallan [7] 41/16 41/18 42/16 55/18 97/21 98/8 99/3 Kara [3] 57/17 57/24 266/16 Karen [1] 163/11 Katz [2] 72/13 266/15 KBR [72] 1/6 1/7 2/2 8/19 18/23 18/25 18/25 21/25 32/1 32/3 32/6 32/8 33/6 33/21 34/25 38/25 39/6 45/19 48/2 53/17 53/18 54/9 54/25 55/2 56/11 56/25 59/18 59/23 60/6 60/8 60/17 61/5 61/9 61/10 61/11 61/20 61/25 62/1 62/4 62/6 62/10 62/10 62/21 118/25 152/17 154/7 159/21 174/6 174/10 174/19 179/12 187/4 190/7 190/9 190/15 190/21 191/10 196/2 241/23 242/22 246/19 251/15 252/15 254/3 265/2 270/8 270/9 273/3 273/6 273/11 273/21 274/1 KBR -- I [1] 21/25 KBR's [6] 34/16 55/21 57/17 61/11 263/19 267/8 keep [9] 9/13 67/21 101/6 120/18 133/18 133/25 141/14 148/2 262/21 keeping [3] 50/22 148/13 153/25 KEITH [1] 1/10 KELLOGG [3] 1/6 1/7 190/7 | | | | | | | | |

know... [35] 237/13 241/8
 243/15 243/16 245/11 247/23
 248/8 248/16 248/17 249/19
 250/6 252/1 252/9 252/9
 252/9 254/11 256/25 258/9
 259/21 259/25 261/14 261/19
 262/13 262/18 262/19 265/13
 268/7 270/1 270/15 274/21
 276/1 276/19 279/20 281/13
 281/21
 knowing [1] 140/24
 knowledge [6] 6/4 61/11 61/15
 149/12 253/24 254/1
 known [2] 142/15 263/7
 knows [5] 58/11 138/6 150/12
 240/13 278/17
 Kristen [14] 10/7 10/10 10/25
 11/11 174/1 174/4 175/4
 175/5 175/7 175/14 175/24
 185/23 269/2 269/3
 L
 lab [1] 89/10
 laboratory [1] 190/3
 laceration [3] 44/10 44/11
 44/15
 lacerations [1] 84/24
 lack [1] 266/21
 lacked [1] 160/17
 Jackson [9] 111/8 111/18
 111/24 112/3 112/12 112/20
 113/3 113/6 113/11
 ladies [3] 68/11 131/20
 272/22
 lady [2] 111/21 140/9
 Lahiri [4] 34/3 35/8 35/15
 35/20
 laid [1] 27/4
 Lamictal [1] 39/14
 language [3] 157/11 183/19
 237/5
 Lannie [1] 1/14
 lap [1] 19/8
 large [2] 6/7 261/9
 larger [3] 14/21 261/6 261/12
 laser [2] 13/22 44/2
 lash [1] 40/5
 last [39] 5/25 26/2 27/13
 35/18 40/3 48/5 63/16 66/12
 77/19 92/3 107/18 112/6
 118/23 119/21 135/10 135/20
 142/6 157/12 182/14 183/15
 183/25 209/13 210/24 210/24
 217/11 228/16 228/18 229/21
 231/3 232/20 237/17 242/5
 242/16 243/9 245/13 245/21
 245/22 247/7 273/15
 lasted [3] 129/3 129/4 230/5
 late [12] 120/18 121/15
 121/18 149/20 166/2 169/22
 222/16 242/7 242/15 245/15
 246/11 247/8
 later [17] 29/3 35/17 88/7
 88/9 133/3 177/17 180/18
 200/17 209/2 211/15 213/9
 214/8 217/13 218/12 231/25
 236/14 269/14
 laughed [1] 27/10
 launched [2] 195/21 195/23
 law [11] 1/15 1/18 1/21 7/4

lawsuit [11] 16/15 38/22
 54/21 56/3 58/5 58/6 64/21
 84/7 117/7 134/8 256/14
 lawyer [9] 68/15 68/15 69/15
 69/18 70/18 70/19 83/19
 268/1 269/11
 lawyers [3] 42/25 55/21
 158/18
 lay [8] 13/9 13/10 16/16
 20/18 154/21 201/25 264/15
 265/9
 layers [2] 161/3 192/14
 laying [2] 18/18 20/23
 layout [1] 204/11
 leader [1] 110/23
 leading [6] 4/11 69/16 69/23
 188/18 215/2 265/5
 leads [2] 141/18 266/17
 leak [1] 131/3
 leaned [1] 22/1
 learn [4] 16/17 47/2 47/11
 90/6
 learned [12] 15/7 46/2 46/7
 46/10 47/6 47/13 70/9 84/6
 102/15 122/17 148/23 218/12
 learning [1] 151/24
 lease [5] 155/17 156/1 156/6
 157/21 171/7
 least [7] 8/19 67/25 104/4
 215/23 248/1 272/6 279/18
 leave [14] 29/22 33/3 60/8
 79/6 93/12 131/21 131/22
 158/19 211/1 221/6 227/16
 227/21 262/22 262/25
 leaves [3] 6/12 21/15 21/16
 leaving [2] 33/11 218/23
 led [3] 131/2 132/4 140/15
 left [23] 6/11 9/11 10/4
 13/23 27/5 28/24 32/5 32/6
 33/4 42/9 44/3 44/6 44/17
 93/11 117/14 156/23 177/24
 210/20 221/22 222/5 225/2
 238/13 239/21
 left-sided [1] 117/14
 legal [4] 52/3 104/9 246/4
 270/16
 legislative [1] 101/18
 legs [3] 12/19 13/10 28/5
 LEIGH [11] 1/3 10/1 45/7
 45/11 45/14 56/17 56/20 57/2
 77/22 77/23 190/6
 length [4] 171/6 171/7 171/12
 200/1
 lengths [1] 42/1
 lengthy [1] 248/2
 Leonard [2] 158/25 159/16
 Leonard's [1] 159/14
 less [6] 90/16 90/19 130/14
 172/3 214/15 275/22
 let [45] 5/11 5/17 6/8 11/25
 25/20 34/19 34/23 34/25 40/7
 52/25 59/1 67/14 83/13 100/5
 104/5 108/1 109/3 112/5
 118/12 118/21 122/14 124/7
 125/12 135/15 165/16 177/6
 184/17 187/13 187/25 188/9
 189/12 191/14 197/12 198/2
 199/9 208/1 209/18 225/6
 239/22 247/6 263/6 265/24
 268/15 271/10 276/11

let's [77] 9/13 11/15 14/22
 18/12 29/23 29/7 39/13 45/25
 56/23 65/4 68/11 76/20 77/15
 83/22 88/17 89/21 90/20
 92/11 96/24 97/4 99/9 103/2
 110/10 114/20 114/25 116/7
 116/13 120/7 122/12 124/19
 126/4 126/7 129/12 133/4
 134/24 134/24 135/8 135/20
 140/13 143/5 145/11 152/6
 154/13 155/12 155/20 156/9
 159/6 159/14 162/19 172/19
 176/4 181/13 190/18 191/7
 192/24 194/16 195/4 201/14
 203/3 207/4 207/7 211/1
 221/16 224/17 227/25 228/1
 230/14 233/1 236/5 237/15
 237/15 238/21 257/1 258/19
 262/11 264/12 280/11
 letter [13] 35/8 128/18 189/2
 189/6 189/20 190/2 193/7
 193/11 196/12 196/14 196/21
 196/24 197/4
 letters [1] 133/8
 letting [1] 188/20
 level [6] 44/22 44/25 55/7
 64/13 89/12 271/21
 levels [1] 160/10
 libel [4] 103/23 103/25 104/9
 104/12
 libel-proof [4] 103/23 103/25
 104/9 104/12
 Liberty [2] 137/22 138/7
 Lidocaine [4] 13/13 13/15
 16/2 16/2
 lids [1] 216/6
 lied [9] 191/13 191/16 192/23
 194/9 197/2 197/3 197/10
 197/16 210/10
 life [19] 56/3 56/7 72/4 72/5
 73/13 73/15 90/8 94/19
 107/17 110/8 115/22 131/3
 140/24 140/25 149/21 152/2
 192/12 278/25 280/7
 life-threatening [1] 131/3
 lift [1] 180/16
 light [4] 20/12 30/19 179/10
 268/25
 like [96] 4/17 7/5 11/16
 19/14 19/22 19/25 20/5 22/3
 22/16 24/1 26/1 26/21 31/23
 31/23 33/7 41/6 42/12 46/11
 47/16 49/23 50/2 50/5 50/13
 55/2 56/4 56/13 59/11 64/19
 65/1 100/8 101/4 104/7
 104/15 104/23 107/7 110/7
 111/11 112/18 116/23 120/9
 124/18 124/20 130/13 136/11
 138/14 141/12 147/4 147/9
 147/10 148/9 149/10 150/2
 151/9 153/15 154/6 156/23
 157/8 159/21 162/9 164/22
 165/5 165/5 170/15 172/14
 184/3 184/18 197/10 202/17
 208/15 208/22 209/25 211/1
 216/5 216/6 217/8 220/8
 220/22 221/14 224/13 224/13
 225/10 232/20 234/8 237/22
 247/21 247/22 249/21 256/19
 261/16 262/1 269/12 274/13
 274/18 276/2 281/4 282/14
 liked [1] 220/7

| | | |
|--|--|--|
| L Case 4:07-cv-02719 Document 305 Filed 06/27/11 Page 310 of 335 | | |
| likely [4] 7/20 53/15 156/6 234/1 liking [1] 220/6 Lilly [1] 31/11 limine [4] 45/24 46/19 46/23 56/22 limp [1] 117/17 linchpin [1] 104/8 line [39] 52/3 77/21 81/3 81/4 108/10 108/10 120/11 126/19 127/12 132/19 144/21 165/18 199/25 200/2 200/5 209/13 239/24 241/23 242/1 244/4 244/14 246/21 254/20 259/2 259/13 260/24 262/5 262/6 262/6 264/19 267/6 267/6 271/2 271/3 272/14 273/2 273/16 273/17 278/24 lines [22] 80/3 80/18 107/14 108/16 113/21 221/17 225/12 240/1 242/2 242/3 242/9 243/1 244/7 244/16 256/18 262/13 263/13 264/12 264/13 266/5 267/20 274/7 lingering [1] 241/24 list [6] 101/4 245/23 247/7 247/7 248/10 254/2 listed [1] 254/1 listen [2] 199/2 274/15 lists [2] 18/11 18/15 litigation [1] 51/9 little [31] 23/11 27/1 27/3 27/7 27/15 33/4 33/7 33/10 33/11 34/19 36/8 44/17 56/8 56/17 57/7 69/16 78/8 80/22 99/3 107/14 144/23 147/17 156/12 169/2 180/24 205/9 208/15 231/21 256/5 277/25 279/24 live [3] 40/22 40/22 163/5 lived [4] 41/21 73/24 132/7 137/10 lives [2] 62/5 62/6 living [5] 23/21 41/20 131/18 137/14 149/18 LLP [1] 2/10 load [1] 205/25 loaded [2] 84/25 205/23 loan [1] 132/24 located [2] 12/20 252/15 location [1] 185/18 locations [3] 12/20 12/21 89/5 lock [2] 153/5 154/8 locked [2] 154/2 250/7 locking [3] 153/11 153/13 154/2 locks [1] 153/6 Loewe [1] 278/10 LOGCAP [3] 18/7 18/8 136/6 LOGCAP III [1] 136/6 logs [1] 250/12 long [30] 11/9 19/24 19/24 21/25 22/15 22/21 23/23 27/3 27/17 29/20 29/20 35/15 124/11 151/5 151/6 152/19 161/24 192/18 214/1 222/3 222/6 241/9 245/9 245/23 246/19 255/10 262/5 263/14 263/24 263/25 | longer [7] 4/24 9/14 139/23 165/9 166/5 167/7 168/14 look [54] 7/4 12/16 15/11 24/3 29/7 35/6 37/25 49/10 50/10 63/9 75/15 75/19 85/7 88/5 88/19 90/6 96/24 98/16 100/4 100/6 107/6 108/9 108/15 108/19 119/15 119/20 120/23 121/5 125/15 126/12 129/14 136/17 143/5 143/5 154/14 156/23 157/8 179/4 184/17 190/18 191/7 192/21 196/6 201/14 203/11 212/13 228/1 233/1 237/15 242/25 248/5 260/1 261/1 274/19 looked [13] 15/24 23/14 43/23 44/8 47/12 68/1 69/20 146/8 148/7 150/2 151/9 157/17 212/10 looking [19] 14/16 49/14 59/8 64/4 73/12 75/8 92/3 92/13 96/4 103/18 106/9 150/19 160/1 160/2 202/2 239/2 267/16 277/22 282/6 looks [12] 13/19 37/13 104/7 112/18 156/23 157/8 184/18 208/22 209/24 221/14 237/22 256/19 Loop [1] 114/5 lose [2] 139/25 152/15 loss [3] 84/18 84/18 188/19 lost [1] 188/8 lot [39] 6/7 16/20 16/22 20/17 23/13 25/2 29/2 37/11 37/13 45/22 49/19 70/6 70/11 70/14 74/11 79/22 98/23 99/19 108/4 111/19 113/15 114/6 115/18 117/3 120/17 130/24 132/3 138/1 138/2 141/21 141/22 202/21 205/9 219/18 227/19 243/7 247/25 254/22 280/23 lots [1] 131/1 loud [1] 77/15 low [2] 108/25 262/1 low-cut [1] 262/1 low-grade [1] 108/25 lower [2] 16/1 76/1 ludicrous [1] 55/24 Luke's [1] 241/4 lumbar [1] 108/5 Lunardi [3] 203/17 203/20 204/1 lunch [4] 99/8 124/15 124/16 153/16 Lynn [2] 35/16 198/9 | 104/11 118/3 123/7 137/21 138/7 157/13 160/14 160/20 168/21 177/16 177/17 177/20 189/6 192/10 198/13 198/15 202/10 210/16 213/3 214/17 217/17 230/1 230/4 233/18 238/5 246/5 246/24 252/20 252/21 253/10 253/23 271/16 271/16 279/22 Magistrate [1] 161/5 mail [55] 24/3 24/8 24/8 24/18 25/14 32/2 35/3 102/5 102/7 102/14 129/21 130/3 130/11 133/8 133/13 135/1 135/5 135/10 135/21 135/22 136/10 136/18 136/21 139/17 139/21 140/4 140/15 155/9 157/25 158/4 165/9 166/5 167/7 167/9 167/12 167/21 168/13 169/16 169/18 169/22 228/6 231/4 231/10 231/13 231/19 232/14 234/13 234/17 234/20 238/16 239/5 239/14 239/14 245/12 249/23 mailed [1] 237/25 mailing [2] 158/5 238/12 mails [18] 8/19 8/23 8/24 9/4 33/22 72/9 128/19 130/8 134/12 135/8 139/10 139/16 140/5 140/14 140/15 154/22 168/24 232/20 Main [1] 2/6 mainly [1] 268/1 make [43] 21/10 25/22 30/12 43/8 52/17 52/20 56/10 56/10 64/13 80/22 88/2 90/20 95/20 101/23 102/3 103/9 112/13 120/19 120/20 126/10 132/24 141/12 147/15 152/10 153/14 163/21 177/6 180/22 195/14 206/12 212/13 218/14 223/18 225/11 226/12 229/13 239/15 242/13 246/22 267/1 270/23 274/22 274/25 makes [7] 12/25 61/19 61/25 87/19 110/20 251/14 280/12 makeup [4] 259/6 259/13 260/14 260/19 making [12] 31/6 93/19 94/22 95/7 179/5 180/4 181/4 188/21 200/3 200/4 247/15 282/2 male [5] 79/9 154/11 173/18 194/11 267/7 malfunction [2] 80/20 142/4 malfunctions [1] 181/16 Mall [3] 18/6 53/4 54/9 man [15] 32/19 41/14 80/10 148/24 149/6 149/19 149/22 150/12 152/2 153/24 173/12 182/20 225/5 226/15 256/15 managed [2] 41/7 254/23 management [1] 4/23 manager [7] 23/8 24/3 32/8 152/17 154/4 154/7 154/11 managers [1] 53/19 mandatory [1] 52/16 Manguno [2] 38/17 39/8 Manguno-Mire [1] 39/8 manifestation [1] 108/22 many [14] 26/12 38/14 46/16 46/17 46/21 111/2 121/3 |

| M Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 311 of 335 | | |
|---|--|---|
| many... [7] 129/7 147/19 147/19 147/19 159/2 215/21 216/3 March [8] 119/2 119/4 120/13 165/8 166/4 166/10 167/6 168/11 March 21st [1] 168/11 Marie [1] 1/21 mark [11] 81/15 89/19 135/2 145/5 145/12 148/7 148/15 149/25 150/1 151/8 155/10 marked [2] 55/2 67/17 markets [1] 18/17 marks [1] 133/9 married [2] 42/15 73/19 Master's [1] 45/9 material [3] 160/10 163/10 163/13 Matt [4] 209/2 213/21 213/25 214/13 matter [4] 146/18 194/19 248/22 266/13 matters [4] 50/21 98/24 148/5 220/2 Matthew [5] 30/3 33/5 33/14 220/25 222/4 mauled [1] 66/5 max [1] 108/17 maximum [1] 5/24 may [88] 4/4 4/25 6/19 7/12 9/23 9/24 23/1 28/24 42/18 42/18 45/24 46/3 48/11 48/17 51/13 51/14 56/9 59/1 62/18 63/11 63/14 66/24 69/22 69/22 70/4 74/6 74/8 75/4 90/3 91/17 91/18 91/19 92/10 98/3 99/12 102/3 106/3 106/4 110/3 110/11 117/1 131/11 131/20 158/17 158/18 164/11 164/16 164/17 164/18 166/2 167/2 167/3 167/14 167/14 167/16 167/22 170/18 170/19 197/10 197/16 198/18 201/2 203/5 206/22 222/24 224/7 224/11 240/12 240/15 240/17 240/17 243/5 246/20 246/22 252/3 253/5 254/4 262/17 262/22 262/23 263/14 264/1 266/11 268/7 275/19 281/16 281/18 282/20 maybe [18] 15/16 15/17 23/17 29/1 45/3 61/4 75/5 111/1 111/20 111/22 117/3 121/1 140/23 168/18 173/17 174/9 198/13 281/4 McCormack [5] 30/3 33/5 33/14 158/23 159/1 McKinney [21] 2/9 2/10 6/12 71/4 71/5 71/15 74/5 108/8 111/17 118/8 133/16 133/24 150/24 162/9 164/17 192/16 194/23 199/3 213/14 227/3 227/4 McKinney's [2] 67/11 83/22 McMichael [5] 30/2 30/22 31/18 33/16 203/18 me [267] 4/3 5/17 6/18 7/16 9/14 10/18 11/2 11/17 11/20 11/25 12/17 12/21 12/23 13/1 13/3 13/19 13/19 14/3 17/17 | 19/1 19/11 19/12 19/22 19/23 19/23 20/1 20/1 20/3 21/1 21/18 22/3 22/6 22/8 23/13 24/24 24/25 25/2 25/4 25/20 25/21 25/21 27/3 27/8 28/9 28/11 28/14 28/17 28/18 28/19 29/11 30/23 31/2 31/17 31/18 31/21 31/22 31/24 32/9 33/6 33/6 34/9 34/19 34/23 36/17 37/15 38/3 39/2 39/3 40/7 40/19 41/1 41/3 41/9 41/22 42/1 42/3 42/4 42/6 42/7 42/10 42/20 43/5 43/23 45/1 45/11 53/2 54/25 55/2 55/15 55/25 59/1 59/13 59/20 61/20 66/20 67/6 67/14 69/9 71/18 72/3 72/19 72/21 72/23 73/11 76/25 77/24 79/1 79/4 79/13 79/21 81/21 85/25 86/20 87/6 87/7 87/17 89/11 91/6 91/8 91/25 93/24 94/16 94/16 95/3 95/16 98/8 98/13 99/9 100/5 102/24 108/1 109/3 110/20 110/22 111/20 112/5 113/10 114/7 114/18 116/18 118/21 119/7 120/9 120/18 120/19 120/20 121/17 122/14 123/6 123/7 124/5 124/7 124/7 125/10 125/12 128/11 130/18 132/25 133/17 133/23 134/1 134/3 134/14 134/19 135/15 136/13 139/23 140/3 140/7 141/18 141/21 145/12 146/21 149/6 149/15 153/24 156/5 156/16 156/16 156/17 156/17 157/25 162/5 165/14 165/16 166/11 167/6 167/21 170/15 170/16 171/3 171/24 175/17 175/17 177/6 178/24 180/12 183/6 183/18 184/17 186/16 188/3 188/9 189/12 191/14 192/22 194/13 196/13 197/12 197/24 197/25 198/2 198/9 198/16 199/9 199/22 201/5 208/1 209/18 211/11 212/6 212/14 212/16 213/1 215/14 218/1 218/23 220/9 223/2 223/16 225/6 225/12 225/25 226/18 227/1 227/1 229/5 231/14 233/18 234/11 235/16 235/16 236/6 236/24 239/22 240/23 247/11 251/16 256/5 257/17 259/20 260/16 261/16 263/6 264/10 265/24 268/7 268/15 268/15 269/15 271/10 274/25 276/11 277/16 277/18 279/22 280/14 mean [53] 9/3 21/25 25/4 38/6 38/20 46/15 47/6 50/6 58/10 58/12 60/18 63/2 64/18 81/17 103/6 106/11 107/5 110/9 113/16 116/4 117/1 117/3 117/24 122/7 124/5 128/10 130/12 152/4 175/1 186/4 223/6 225/7 227/4 239/22 242/5 242/25 243/23 244/12 246/2 246/24 248/16 252/5 256/17 256/21 257/12 258/12 259/14 269/11 269/14 270/8 271/24 275/16 276/10 meaning [1] 229/15 means [12] 15/8 48/16 51/12 | 64/19 79/5 84/21 92/5 107/2 128/2 141/23 177/15 182/23 meant [5] 12/17 15/7 91/25 234/7 234/20 measures [1] 143/1 mechanical [1] 1/24 medevac [3] 191/12 191/15 194/5 media [9] 12/10 12/13 49/22 52/20 63/20 63/25 65/1 70/8 70/9 medic [1] 28/17 medical [19] 15/23 20/23 72/9 80/12 81/9 85/5 106/20 108/19 121/11 131/21 132/3 132/5 138/4 144/6 158/24 204/2 227/17 227/22 241/4 medication [3] 55/11 93/1 93/7 medications [1] 183/3 meds [1] 94/4 meet [5] 28/14 41/19 109/17 206/12 257/16 meeting [9] 32/7 32/8 32/9 148/4 148/18 148/23 154/5 154/8 227/12 meets [1] 280/20 Meisner [10] 38/18 38/20 39/1 39/5 222/25 223/4 223/5 223/7 223/10 240/15 Melissa [1] 208/20 member [1] 51/4 members [6] 22/25 63/13 106/2 113/13 164/16 224/6 memories [2] 179/23 181/3 memory [24] 27/12 37/15 38/2 38/7 64/16 64/20 122/3 122/6 130/14 136/20 165/17 175/19 180/12 188/8 188/19 210/13 218/2 218/22 221/24 222/5 231/21 232/17 245/17 269/5 men [15] 185/14 187/12 187/23 188/6 188/19 191/22 193/6 193/13 194/18 195/11 196/16 260/1 261/1 266/8 266/21 mention [8] 53/24 54/2 54/8 54/11 67/20 167/24 178/6 270/10 mentioned [6] 23/23 117/9 117/11 130/20 239/8 242/7 mentions [1] 273/25 merit [1] 160/12 message [12] 101/4 135/22 136/11 139/18 139/21 155/6 237/11 238/2 238/3 238/7 239/8 240/23 messages [1] 93/12 messed [1] 236/15 met [15] 29/11 31/4 41/20 137/17 142/20 149/9 151/19 178/7 205/17 205/20 207/12 249/1 249/22 249/24 270/19 MFT [1] 96/12 mic [2] 49/7 242/20 Michael [1] 159/1 microphone [1] 91/6 middle [11] 45/17 78/8 78/10 78/10 108/15 117/11 121/10 207/5 217/12 245/25 276/20 might [28] 4/10 39/19 82/14 84/8 84/8 86/1 86/16 87/9 90/24 103/1 110/20 119/20 |

| M Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 312 of 335 | | | money [3] 70/13 70/14 70/15 month [2] 122/23 172/13 | | | movement [1] 252/18 moving [1] 245/4 | | |
|---|--------|------------|--|------------------|--------|---|--------------------|------------------------|
| might... [16] | 138/19 | 139/22 | months [11] | 34/10 | 41/18 | 87/13 | MPO [7] | 90/12 90/12 90/14 |
| 153/12 | 158/9 | 169/4 | 153/12 | 119/21 | 123/21 | 147/19 | 92/22 | 93/9 93/13 93/22 |
| 181/3 | 181/10 | 184/22 | 275/22 | 277/11 | 279/7 | 282/24 | Mr [5] | 9/3 9/4 204/1 253/17 |
| 203/11 | 257/2 | 261/11 | moot [1] | 102/4 | | | 273/18 | |
| 262/21 | 271/9 | | more [55] | 5/2 5/2 5/3 5/11 | | | Mr. [153] | 6/12 6/13 8/2 9/24 |
| Mike [2] | 157/25 | 158/2 | 7/4 | 8/23 | 8/25 | 9/1 12/3 38/19 | 60/23 | 60/25 61/1 67/11 71/4 |
| mild [1] | 84/13 | | 45/9 | 53/15 | 54/11 | 62/12 62/14 | 71/5 | 71/15 74/5 79/11 83/22 |
| military [10] | 33/8 | 78/16 | 62/23 | 64/11 | 64/13 | 64/16 75/9 | 103/19 | 108/8 111/17 115/21 |
| 90/10 | 90/11 | 90/12 | 91/24 | 100/6 | 104/18 | 119/7 | 118/8 | 118/24 122/19 123/4 |
| 191/13 | 191/16 | 227/18 | 119/22 | 126/23 | 130/18 | 131/16 | 123/12 | 124/23 125/24 129/8 |
| Milloy [3] | 161/6 | 177/23 | 133/3 | 142/15 | 149/9 | 155/18 | 133/13 | 133/16 133/24 139/22 |
| 177/25 | | | 171/6 | 171/15 | 172/3 | 199/4 | 139/24 | 142/2 146/1 147/2 |
| mind [9] | 31/25 | 75/13 | 199/16 | 204/14 | 204/15 | 208/15 | 147/15 | 147/18 147/21 148/2 |
| 167/9 | 202/2 | 214/23 | 215/23 | 215/24 | 227/19 | 229/2 | 148/15 | 148/17 148/22 150/24 |
| 234/13 | 236/21 | | 243/15 | 247/13 | 254/20 | 260/22 | 152/10 | 152/14 153/13 154/22 |
| minded [1] | 71/6 | | 261/23 | 269/9 | 275/2 | 278/4 | 155/9 | 157/5 157/13 157/23 |
| mine [1] | 67/12 | | 278/15 | 279/13 | 279/25 | | 158/4 | 162/9 164/17 165/1 |
| minimal [1] | 280/10 | | Moreover [1] | 47/18 | | | 165/7 | 165/8 168/13 168/13 |
| minor [1] | 40/1 | | Morgan [1] | 136/2 | | | 169/14 | 169/24 171/17 172/6 |
| minute [12] | 22/16 | 24/1 58/21 | morning [51] | 9/16 | 11/10 | 16/21 | 176/10 | 177/6 177/10 178/17 |
| 71/9 | 115/20 | 154/17 | 17/1 | 17/22 | 28/2 | 28/6 28/12 | 178/17 | 178/20 179/1 179/5 |
| 222/19 | 228/13 | 230/8 | 42/12 | 64/11 | 71/14 | 71/15 | 179/20 | 179/24 180/1 180/2 |
| 256/22 | | | 102/5 | 102/6 | 104/19 | 104/21 | 180/4 | 180/7 181/1 181/9 |
| minutes [17] | 22/21 | 27/18 | 106/17 | 158/6 | 172/22 | 173/6 | 186/18 | 190/15 192/16 192/25 |
| 158/14 | 211/3 | 212/23 | 173/21 | 173/23 | 174/22 | 178/5 | 194/23 | 199/3 199/3 203/20 |
| 214/8 | 214/12 | 214/14 | 178/11 | 178/12 | 179/20 | 180/12 | 204/1 | 205/22 206/7 206/7 |
| 218/17 | 218/19 | 219/3 | 185/19 | 195/7 | 199/23 | 204/7 | 206/15 | 206/20 208/2 208/19 |
| 231/25 | 236/14 | | 208/2 | 222/12 | 225/3 | 228/3 | 209/2 | 209/3 209/8 210/7 |
| Mire [2] | 38/17 | 39/8 | 228/6 | 228/11 | 230/2 | 231/15 | 210/8 | 213/14 214/17 215/21 |
| mirror [2] | 37/25 | 38/5 | 232/8 | 232/21 | 234/10 | 237/11 | 218/3 | 219/3 219/21 220/6 |
| misapprehension [2] | 87/11 | | 238/3 | 238/7 | 247/19 | 248/7 | 220/14 | 220/14 220/19 221/5 |
| 269/20 | | | 249/23 | 264/2 | 264/3 | | 221/20 | 225/2 226/2 226/23 |
| mischaracterized [1] | 266/7 | | Morris [5] | 1/21 | 1/21 | 5/2 6/6 | 227/2 | 227/3 227/4 227/11 |
| mischaracterizes [4] | 127/8 | | 272/18 | | | | 229/20 | 229/20 230/11 231/24 |
| 192/4 | 192/8 | 267/22 | most [3] | 75/1 | 177/24 | 198/24 | 232/1 | 234/4 234/22 236/7 |
| mischaracterizing [1] | 269/9 | | mother [67] | 23/21 | 25/24 | 37/19 | 244/12 | 250/9 251/3 253/1 |
| mischief [1] | 6/18 | | 40/5 | 41/20 | 41/20 | 42/1 42/9 | 253/18 | 254/22 255/3 256/2 |
| miscommunication [2] | 36/17 | | 98/11 | 98/12 | 110/11 | 110/20 | 256/4 | 258/1 258/18 263/16 |
| 36/19 | | | 110/21 | 110/22 | 111/3 | 111/4 | 264/21 | 264/25 267/7 268/19 |
| misconduct [1] | 280/13 | | 130/19 | 130/22 | 131/25 | 134/13 | 268/24 | 271/7 271/13 272/1 |
| misdemeanor [1] | 5/21 | | 135/8 | 135/25 | 136/5 | 136/9 | 273/9 | 273/12 273/18 273/21 |
| misleading [4] | 50/10 | 60/2 | 136/18 | 136/25 | 137/3 | 137/8 | 273/25 | 274/2 277/24 |
| 271/6 | 272/9 | | 137/16 | 137/24 | 138/6 | 138/19 | Mr. Adams [5] | 267/7 272/1 |
| misplaced [1] | 125/12 | | 139/2 | 140/8 | 140/17 | 140/21 | 273/9 | 273/21 273/25 |
| misrepresent [1] | 161/11 | | 141/5 | 141/12 | 141/20 | 141/21 | Mr. Adams' [2] | 271/7 271/13 |
| missed [2] | 26/3 | 168/18 | 146/12 | 146/14 | 146/17 | 146/19 | Mr. Andino [1] | 263/16 |
| misshapen [1] | 38/11 | | 146/23 | 147/1 | 147/14 | 148/3 | Mr. Arroyo [18] | 177/6 178/17 |
| missing [1] | 171/1 | | 148/4 | 148/14 | 148/16 | 148/18 | 178/20 | 179/1 179/5 179/20 |
| misstatement [1] | 269/19 | | 149/2 | 149/4 | 149/7 | 149/18 | 179/24 | 180/1 180/4 180/7 |
| mistake [5] | 87/11 | 92/1 121/2 | 150/15 | 150/16 | 151/14 | 151/24 | 181/1 | 181/9 206/7 227/11 |
| 127/10 | 210/20 | | 152/1 | 152/3 | 271/4 | 271/5 | 232/1 | 234/4 236/7 268/24 |
| mistaken [1] | 5/25 | | 271/14 | 272/2 | 272/4 | | Mr. Arroyo's [2] | 177/10 |
| mistakenly [1] | 228/19 | | mother's [8] | 110/19 | 130/20 | | 231/24 | |
| misunderstand [1] | 169/15 | | 130/21 | 131/14 | 138/14 | 138/23 | Mr. Bortz [22] | 6/13 8/2 |
| misunderstanding [2] | 36/15 | | 147/18 | 150/7 | | | 103/19 | 178/17 180/2 190/15 |
| 117/1 | | | motion [7] | 45/24 | 46/19 | 46/22 | 206/7 | 206/15 208/2 208/19 |
| misunderstood [2] | 78/4 | 88/14 | 56/22 | 101/8 | 103/2 | 103/24 | 209/8 | 220/6 220/14 220/14 |
| mitigating [1] | 104/1 | | mountains [1] | 255/22 | | | 220/19 | 225/2 226/2 255/3 |
| mitigation [2] | 103/21 | 104/2 | mouth [1] | 13/8 | | | 256/2 | 256/4 258/1 273/12 |
| mode [2] | 61/14 | 236/13 | mouthpiece [1] | 268/24 | | | Mr. Bortz' [9] | 205/22 210/7 |
| molded [1] | 124/5 | | move [29] | 42/20 | 45/25 | 56/23 | 221/5 | 221/20 226/23 229/20 |
| mom [12] | 31/5 | 110/18 | 100/8 | 107/8 | 114/10 | 115/20 | 230/11 | 254/22 277/24 |
| 113/17 | 132/12 | 139/8 | 122/12 | 129/23 | 130/3 | 134/24 | Mr. Castillo [1] | 209/2 |
| 140/17 | 147/2 | 148/22 | 134/24 | 135/12 | 143/7 | 154/18 | Mr. Castillo's [2] | 209/3 |
| 151/19 | | | 154/25 | 159/22 | 168/2 | 172/19 | 210/8 | |
| moment [9] | 14/4 | 25/3 | 183/9 | 189/10 | 199/2 | 202/1 | Mr. Daigle [1] | 79/11 |
| 106/15 | 121/7 | 141/18 | 202/12 | 206/6 | 230/20 | 241/3 | Mr. Estefan [1] | 244/12 |
| 203/5 | 229/19 | | 241/11 | 241/17 | | | Mr. Hedges [2] | 251/3 253/1 |
| Monday [1] | 245/3 | | moved [4] | 132/11 | 194/5 | 252/6 | Mr. Iler [36] | 115/21 118/24 |
| Mondays [1] | 168/16 | | 252/23 | | | | 122/19 | 123/4 123/12 124/23 |

| M Case 4:07-cv-02719 Document 305 Filed 11/18/11 Page 313 of 335 | | |
|---|--|--|
| Mr. Iler... [30] 125/24 129/8 133/13 139/22 142/2 146/1 147/2 147/15 147/18 147/21 148/2 148/15 148/17 148/22 152/10 152/14 153/13 154/22 155/9 157/5 157/13 157/23 165/1 165/7 165/8 168/13 168/13 169/14 169/24 171/17 | 261/8-266/6 268/6 268/6 268/8 268/23 271/18 272/6 272/18 273/3 274/14 275/19 275/23 275/25 276/1 276/13 276/18 276/21 277/6 278/16 279/22 280/24 | 11/1 11/18 11/20 12/3 12/19 12/19 13/6 13/7 13/8 13/8 13/10 13/11 14/12 15/1 17/18 17/20 20/18 20/22 21/13 21/13 21/22 22/6 22/6 22/7 25/23 25/24 26/13 27/4 27/11 28/3 28/4 28/4 28/4 28/5 28/10 28/14 29/21 30/25 31/5 31/10 31/10 31/18 31/24 34/4 34/5 34/18 35/21 36/4 36/16 37/16 37/19 37/22 39/12 40/1 40/5 40/6 40/12 40/23 41/10 41/16 41/17 41/20 41/20 41/25 42/9 42/19 42/20 43/6 43/17 43/23 44/19 45/4 45/9 49/7 49/8 52/10 52/24 52/24 55/14 55/16 56/7 56/9 59/4 60/20 60/24 61/15 64/11 65/10 71/16 71/22 72/3 77/25 81/15 86/22 86/23 86/25 86/25 87/2 89/19 89/20 92/1 93/22 93/25 94/4 94/11 94/12 94/21 95/10 98/11 98/12 100/1 104/11 105/6 109/6 110/8 110/14 110/18 110/18 110/19 110/20 110/21 113/14 113/16 113/16 113/17 116/18 117/6 117/23 121/1 125/12 125/20 126/8 127/10 128/25 130/14 130/18 130/18 130/19 132/11 132/11 133/18 133/19 133/22 133/25 134/2 134/22 136/25 139/15 140/8 141/21 142/4 144/5 146/12 146/21 149/12 149/12 149/13 150/20 151/13 151/19 152/5 155/9 155/14 156/23 157/8 157/22 159/8 159/18 160/19 161/9 161/11 162/5 162/21 162/22 164/20 167/15 167/18 167/22 167/24 168/17 169/16 170/25 171/2 171/5 175/17 178/24 179/16 179/16 179/22 181/8 187/20 188/5 188/8 192/12 196/2 203/12 211/6 211/12 215/15 216/18 222/25 223/5 223/7 225/5 234/3 236/12 239/14 243/4 244/4 244/14 249/24 256/6 265/18 266/3 267/24 273/22 276/14 279/24 |
| Mr. Iler's [2] 139/24 172/6 Mr. Jones [1] 253/18 Mr. Jones' [2] 229/20 250/9 Mr. Kelly [10] 9/24 60/25 61/1 176/10 192/25 199/3 227/2 264/21 268/19 274/2 Mr. Kelly's [5] 60/23 186/18 206/20 234/22 273/18 Mr. Lunardi [2] 203/20 204/1 Mr. McKinney [19] 6/12 71/4 71/5 71/15 74/5 108/8 111/17 118/8 133/16 133/24 150/24 162/9 164/17 192/16 194/23 199/3 213/14 227/3 227/4 Mr. McKinney's [2] 67/11 83/22 Mr. Ryan [3] 214/17 215/21 218/3 Mr. Schmidt's [2] 258/18 264/25 Mr. Soriano [2] 219/3 219/21 Mr. White [1] 158/4 Mrogzka [1] 77/24 Mrs. [2] 79/9 278/10 Mrs. Daigle [1] 79/9 Mrs. Loewe [1] 278/10 Ms [9] 6/4 8/20 9/23 123/20 136/4 251/9 252/2 253/15 279/13 Ms. [159] 4/18 5/2 5/7 6/6 8/6 8/22 8/25 22/21 35/8 35/9 48/5 59/22 60/10 61/3 61/12 61/19 62/4 71/14 71/24 72/13 74/11 75/15 76/7 76/22 78/2 80/14 81/17 82/4 82/7 89/10 94/17 94/21 96/21 102/13 106/6 106/7 106/9 106/14 107/16 110/4 111/6 112/5 125/15 131/11 132/6 134/3 134/6 139/21 139/24 140/12 143/6 143/20 150/4 151/11 154/15 163/12 164/20 167/5 167/18 168/7 168/17 174/15 175/9 175/12 175/23 176/25 181/21 181/24 182/7 183/7 183/19 187/21 187/22 189/6 190/2 192/24 195/7 195/10 195/18 196/1 196/9 196/24 197/12 198/2 199/9 200/7 200/12 200/15 201/4 205/25 206/7 206/18 210/16 210/20 211/2 211/3 211/5 214/25 218/25 219/8 222/24 224/9 225/8 228/22 229/9 229/14 231/13 234/24 235/13 249/9 249/17 251/6 251/12 251/15 252/23 253/3 253/4 253/6 253/8 253/19 255/22 256/9 256/10 258/6 258/9 259/5 259/6 259/14 259/24 259/24 260/5 260/6 260/13 260/25 261/2 261/5 261/7 | Ms. Armstrong [4] 200/7 200/15 225/8 253/4 Ms. Chapman [5] 102/13 249/9 253/6 253/8 253/19 Ms. Colatosti [1] 190/2 Ms. Falanga [2] 35/8 35/9 Ms. Guest [1] 96/21 Ms. Jones [96] 4/18 5/7 8/6 8/22 8/25 22/21 59/22 60/10 61/3 61/12 61/19 62/4 71/14 71/24 74/11 75/15 76/7 76/22 78/2 80/14 81/17 82/4 82/7 89/10 94/17 94/21 106/6 106/7 106/9 106/14 107/16 110/4 111/6 112/5 131/11 132/6 134/3 134/6 143/6 143/20 150/4 151/11 154/15 163/12 164/20 167/5 167/18 168/7 168/17 176/25 187/21 189/6 192/24 195/7 196/24 197/12 198/2 199/9 201/4 211/2 214/25 218/25 219/8 222/24 224/9 228/22 229/9 229/14 231/13 249/17 251/6 251/12 251/15 252/23 253/3 255/22 256/9 256/10 258/6 259/24 259/24 260/6 260/25 261/5 261/8 268/6 268/8 271/18 272/6 274/14 275/19 275/23 275/25 276/1 276/21 280/24 Ms. Jones' [6] 125/15 258/9 259/6 261/7 268/23 278/16 Ms. Katz [1] 72/13 Ms. Morris [3] 5/2 6/6 272/18 Ms. Royal [3] 139/21 139/24 140/12 Ms. Rumba [15] 174/15 175/9 175/12 175/23 181/21 181/24 182/7 183/19 187/22 195/10 195/18 196/1 196/9 200/12 268/6 Ms. Rumba's [1] 183/7 Ms. Simco [8] 205/25 206/7 206/18 210/20 211/5 235/13 260/5 260/13 Ms. Simco's [6] 210/16 211/3 234/24 259/5 259/14 261/2 Ms. Vorpahl [7] 48/5 266/6 273/3 276/13 276/18 277/6 279/22 much [18] 9/1 62/23 67/22 70/3 70/15 100/23 123/14 123/14 148/6 213/20 219/16 231/14 242/24 244/6 250/11 256/5 260/19 267/25 multiple [6] 108/22 109/5 134/15 158/22 160/9 194/20 Munchausen [1] 110/13 Munchausen's [4] 110/12 111/1 113/5 113/19 muscle [4] 35/24 36/2 36/4 36/6 must [7] 104/2 104/22 128/25 140/23 230/7 231/5 282/18 my [222] 4/8 7/15 7/15 8/2 | myalgias [1] 107/20 myself [4] 133/21 133/25 157/22 258/12 MySpace [3] 43/14 43/16 43/17 mysterious [1] 240/13 mystery [1] 240/17 N N/V [2] 144/11 144/11 nail [4] 118/22 124/9 125/10 165/6 nails [1] 12/4 naked [4] 17/11 28/3 190/23 191/2 name [28] 6/9 7/5 29/4 29/6 31/3 31/11 38/19 77/19 103/6 136/2 136/15 141/23 197/6 197/21 197/22 208/3 208/4 208/5 208/25 212/22 221/5 221/21 248/4 249/9 252/3 253/6 253/23 263/17 named [7] 31/10 41/17 55/19 |

| N Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 314 of 335 | | |
|--|--|--|
| <p>named... [4] 150/12 173/12 206/16 208/20</p> <p>names [6] 30/1 30/2 197/5 207/24 208/21 208/22</p> <p>narrative [2] 77/5 85/5</p> <p>nationwide [1] 142/7</p> <p>nature [3] 70/8 116/12 123/3</p> <p>nausea [1] 96/17</p> <p>Naval [1] 81/9</p> <p>Navy [2] 73/20 76/18</p> <p>near [1] 242/20</p> <p>neat [1] 29/2</p> <p>necessarily [5] 47/11 143/4 212/24 214/16 270/16</p> <p>necessary [7] 107/25 148/5 168/14 192/18 195/24 196/5 240/7</p> <p>necessitated [2] 71/21 134/7</p> <p>neck [1] 107/19</p> <p>need [49] 9/12 19/10 21/1 21/2 21/2 21/22 21/22 21/22 21/23 22/3 24/24 24/25 34/15 37/4 38/6 48/23 56/12 58/19 66/25 67/21 67/22 69/15 74/13 93/22 97/15 99/20 100/18 102/19 119/7 123/18 154/17 170/20 170/22 185/2 201/20 201/25 229/3 242/16 245/2 245/19 256/3 256/21 261/23 262/13 262/16 266/19 269/15 269/16 274/3</p> <p>needed [14] 30/17 34/8 34/17 37/9 92/23 94/12 98/13 132/18 165/9 166/5 167/7 186/24 187/2 187/3</p> <p>needs [7] 22/21 100/15 100/20 105/10 251/3 262/22 270/13</p> <p>negative [3] 108/11 118/13 191/1</p> <p>neglected [1] 167/24</p> <p>neighbor's [3] 7/16 7/20 60/4</p> <p>neither [4] 4/19 68/15 73/5 276/5</p> <p>Nelson [1] 38/16</p> <p>nervous [1] 96/18</p> <p>neurologic [2] 116/11 117/10</p> <p>neurological [1] 117/18</p> <p>never [22] 29/9 36/12 46/21 92/23 93/24 114/2 116/18 117/6 117/7 121/1 138/16 138/17 169/9 192/2 192/3 192/12 192/20 192/23 197/9 248/10 273/19 274/1</p> <p>new [20] 6/16 106/8 132/15 155/10 206/12 242/5 242/11 242/13 243/18 244/1 244/13 246/13 246/14 246/14 254/2 278/21 278/21 281/5 281/14 281/24</p> <p>newest [5] 144/22 145/1 146/1 146/4 146/11</p> <p>news [1] 148/17</p> <p>next [51] 9/13 13/4 15/16 15/17 17/22 18/13 18/20 29/24 29/25 31/21 64/11 77/1 77/21 80/15 95/19 101/5 103/18 104/16 105/4 105/6 105/10 108/21 114/20 116/7 117/8 144/21 154/13 157/2 167/6 172/24 172/25 173/2</p> | <p>174/1 174/8 183/24 184/3 185/19 190/22 191/7 195/18 209/19 210/15 210/25 214/7 222/12 228/1 236/5 262/18 263/15 265/22 275/6</p> <p>Nguyen [1] 203/17</p> <p>nice [2] 31/23 67/11</p> <p>Nichols [1] 264/11</p> <p>Nicole [4] 38/17 97/2 97/7 98/16</p> <p>night [40] 11/21 17/3 17/16 27/12 31/18 31/19 57/25 65/23 65/24 120/18 120/19 129/3 129/4 131/8 155/16 178/7 179/11 179/23 182/14 183/15 183/25 186/19 187/7 207/12 215/5 217/23 219/7 221/10 226/16 226/24 228/17 229/22 232/8 237/2 242/5 245/13 245/22 246/12 252/12 252/12</p> <p>nights [1] 120/17</p> <p>nine [3] 39/22 40/1 177/8</p> <p>nipple [1] 37/11</p> <p>no [233] 5/19 6/4 7/13 8/1 8/25 10/14 15/10 16/6 16/7 16/8 16/12 16/13 17/6 17/23 20/8 23/22 25/6 26/11 26/16 26/18 27/9 27/12 27/17 27/20 29/17 29/20 30/8 30/19 30/22 32/14 32/15 32/25 33/9 33/19 39/17 40/10 43/13 44/16 45/20 45/25 47/13 48/4 48/6 49/16 51/17 52/11 53/7 53/10 54/1 54/4 54/7 54/10 54/13 54/16 56/7 57/23 58/4 61/11 62/5 62/17 64/9 64/23 65/10 65/12 65/18 65/20 66/6 66/8 68/15 68/21 69/19 73/6 74/3 74/14 79/24 80/1 80/18 81/12 84/17 84/18 84/23 84/24 85/11 86/14 86/22 89/7 89/16 91/11 91/21 92/6 94/7 95/10 96/2 96/18 100/2 100/11 100/12 101/14 102/18 103/20 107/10 113/4 116/21 122/2 122/6 123/6 125/19 127/9 127/21 129/25 130/5 130/10 135/14 135/16 136/22 138/18 139/19 139/22 140/2 140/7 140/7 141/3 141/17 143/12 143/13 143/15 143/16 144/12 149/14 149/14 149/14 149/14 149/14 150/6 151/6 151/6 152/3 152/14 153/6 155/3 157/20 161/24 165/9 166/5 167/7 168/4 168/14 170/9 170/22 173/19 173/25 174/7 177/15 178/3 179/23 180/12 181/3 183/11 185/5 186/20 188/6 189/14 189/15 191/12 192/6 193/16 196/2 196/3 196/23 197/13 199/5 200/11 201/16 201/21 202/13 206/17 206/23 210/6 210/17 211/6 213/14 214/16 215/13 215/22 216/9 216/15 217/15 218/5 219/14 222/7 222/9 222/10 226/20 226/22 227/5 228/25 229/2 230/22 230/25 231/9 231/21 232/4 232/17 233/9 233/10 233/11 234/14 241/1</p> | <p>241/1 241/19 243/19 243/20 244/9 250/13 250/13 253/13 253/14 254/8 254/12 254/17 255/4 257/24 265/16 265/21 266/11 275/18 276/24 279/10 279/10 280/5 280/6 280/14 282/5</p> <p>nobody [4] 68/8 266/22 269/13 272/11</p> <p>Nodding [2] 48/24 172/12</p> <p>noise [1] 152/10</p> <p>non [10] 45/15 63/8 72/14 72/16 72/20 72/24 73/4 152/5 198/17 253/21</p> <p>non-disclosure [2] 152/5 253/21</p> <p>non-falsifiable [5] 72/14 72/16 72/20 72/24 73/4</p> <p>non-identifiable [1] 63/8</p> <p>non-issue [1] 198/17</p> <p>non-profit [1] 45/15</p> <p>none [2] 255/25 260/25</p> <p>nonetheless [2] 200/12 200/15</p> <p>noon [1] 106/10</p> <p>Nope [1] 236/19</p> <p>nor [3] 73/6 93/7 276/6</p> <p>normal [5] 35/19 116/15 117/15 142/9 220/3</p> <p>normally [4] 103/20 170/7 214/15 217/7</p> <p>Norman [2] 8/18 8/21</p> <p>north [1] 79/10</p> <p>not [338]</p> <p>notation [2] 81/5 213/3</p> <p>note [9] 27/15 75/25 88/23 89/2 142/4 170/15 214/7 227/15 241/2</p> <p>notebook [8] 75/15 75/19 82/4 106/8 201/22 238/13 238/13 238/20</p> <p>notebooks [1] 74/2</p> <p>noted [4] 84/20 84/25 128/6 220/5</p> <p>notes [11] 10/10 85/14 85/17 97/1 113/6 117/8 125/12 125/20 150/24 164/20 175/18</p> <p>nothing [11] 69/23 108/6 185/18 187/14 188/1 213/1 214/21 244/1 246/2 246/3 260/1</p> <p>notice [3] 29/4 116/15 247/14</p> <p>noticed [4] 54/25 80/8 169/9 170/7</p> <p>notified [3] 102/3 102/5 223/11</p> <p>noting [1] 117/16</p> <p>notion [1] 7/23</p> <p>novel [1] 31/24</p> <p>November [3] 126/10 132/21 172/14</p> <p>now [155] 6/16 6/23 8/9 19/14 19/14 21/2 21/4 21/12 23/24 23/25 26/5 30/15 30/22 36/8 36/9 37/10 40/18 40/19 40/21 40/22 41/18 52/10 55/7 67/13 67/15 68/20 68/22 68/23 69/22 71/1 71/24 76/7 78/2 78/8 80/14 83/19 83/23 86/12 86/19 89/14 90/6 90/10 90/23 94/25 95/22 97/14 97/25 98/3 99/5 103/14 104/1 104/4 104/6 105/5 105/24 106/23</p> |

| N Case 4:07-cv-02719 Document 305 Filed 10/12/15 Page 315 of 335 | | |
|--|-------------------------------|-------------------------------|
| now... [99] 107/6 107/24 | objection [52] 10/12 10/15 | 173/3 173/4 173/10 173/23 |
| 109/9 113/10 114/4 115/11 | 65/9 65/11 65/12 65/14 69/20 | 190/5 221/12 222/25 230/14 |
| 115/21 116/13 118/15 118/15 | 100/10 100/11 100/12 107/10 | 238/8 238/13 247/21 249/24 |
| 118/15 118/21 119/11 119/19 | 107/11 129/25 130/1 130/5 | 251/14 260/19 |
| 121/4 121/14 122/1 122/24 | 130/6 135/14 135/16 143/12 | officer [16] 77/18 77/18 |
| 127/22 128/13 129/12 130/21 | 143/15 143/17 155/2 155/3 | 77/24 78/4 78/6 80/4 89/15 |
| 135/8 136/2 136/20 138/5 | 155/4 160/11 166/16 168/4 | 90/21 92/5 92/7 92/18 94/9 |
| 140/23 142/1 142/12 142/20 | 168/5 183/11 183/12 189/11 | 162/9 162/18 163/11 204/2 |
| 143/5 143/5 144/21 145/25 | 189/14 189/15 189/16 192/16 | Officer Mrogzka [1] 77/24 |
| 148/22 151/3 156/9 168/17 | 202/13 202/14 202/21 203/2 | officers [4] 79/16 80/5 |
| 170/5 170/17 172/19 173/16 | 206/23 206/25 230/22 230/25 | 204/18 204/24 |
| 175/16 181/13 182/7 182/24 | 231/1 241/10 248/1 255/13 | official [4] 2/12 196/18 |
| 183/7 187/7 188/25 188/25 | 257/18 273/16 274/18 274/20 | 219/9 283/9 |
| 191/2 191/18 193/20 198/14 | 276/15 | officials [2] 32/9 196/4 |
| 202/17 202/21 205/17 208/1 | objectionable [3] 267/25 | often [3] 106/25 138/14 |
| 208/7 209/7 210/25 211/11 | 273/12 276/16 | 146/22 |
| 211/17 213/3 214/25 215/21 | objections [12] 59/10 59/12 | oftentimes [4] 120/8 120/18 |
| 222/3 222/11 224/12 225/15 | 67/24 202/17 242/13 246/14 | 131/7 153/15 |
| 226/8 227/6 228/10 230/14 | 254/21 259/2 262/12 265/18 | oh [30] 39/23 39/23 73/3 |
| 232/7 234/22 235/2 235/4 | 268/18 270/7 | 88/10 92/2 92/10 104/18 |
| 235/16 237/10 239/6 242/12 | objects [1] 59/18 | 105/14 119/13 121/1 121/13 |
| 246/8 251/13 252/8 252/19 | oblivious [1] 141/8 | 124/18 129/17 150/8 173/5 |
| 254/5 261/25 263/7 263/12 | observation [2] 159/13 177/20 | 173/19 185/5 215/6 215/6 |
| 266/11 274/23 275/10 277/21 | observations [3] 114/22 118/4 | 223/14 229/12 231/6 233/4 |
| 278/23 279/14 279/16 279/24 | 162/22 | 237/18 237/24 239/2 241/6 |
| 280/22 | observe [1] 89/7 | 265/25 271/15 277/4 |
| number [42] 14/14 14/16 14/17 | observed [3] 116/8 116/16 | okay [209] 4/3 5/8 8/16 14/18 |
| 17/25 26/3 42/10 63/20 65/6 | 162/20 | 14/22 15/1 15/1 18/4 22/19 |
| 74/7 90/20 91/20 123/21 | obvious [4] 196/6 196/11 | 26/23 32/4 34/19 37/6 38/16 |
| 137/21 138/7 154/19 187/8 | 196/14 266/19 | 48/16 48/25 50/8 51/23 52/13 |
| 195/18 201/8 205/23 215/25 | obviously [6] 14/24 67/24 | 57/8 58/21 59/1 59/9 69/5 |
| 217/21 218/6 221/15 224/14 | 84/23 170/15 247/22 280/23 | 69/6 69/8 73/8 74/12 75/21 |
| 228/1 228/18 228/18 229/10 | occasion [1] 93/18 | 75/24 76/6 76/21 77/7 77/16 |
| 229/10 229/11 229/11 229/16 | occasions [2] 63/20 119/23 | 78/25 80/6 82/6 82/12 83/3 |
| 229/21 229/21 230/5 230/11 | occupied [1] 190/7 | 83/21 88/8 88/21 88/22 90/6 |
| 230/21 239/20 240/16 240/18 | occur [1] 35/19 | 91/1 91/13 91/21 92/2 95/5 |
| 250/23 253/22 | occurred [3] 76/14 76/17 89/6 | 96/3 96/5 96/25 97/24 101/1 |
| Number 001613 [1] 17/25 | occurs [1] 67/6 | 103/1 103/18 104/15 105/8 |
| Number 10 [1] 228/1 | October [19] 122/25 124/2 | 105/24 106/13 111/16 112/7 |
| Number 4 [1] 253/22 | 124/12 124/17 125/2 125/25 | 113/1 114/3 114/9 114/20 |
| Number 56 [1] 230/21 | 126/4 126/9 128/2 130/22 | 114/23 114/24 117/5 118/15 |
| Number 7 [1] 217/21 | 144/1 145/2 145/3 145/18 | 119/13 119/16 120/14 121/1 |
| Number 8 [1] 218/6 | 149/3 149/20 165/2 165/20 | 121/6 121/8 121/13 122/13 |
| Number 9 [3] 221/15 224/14 | 165/24 | 122/24 123/9 125/14 125/22 |
| 239/20 | October 2004 [1] 165/20 | 126/6 126/14 129/10 129/12 |
| numbers [6] 14/12 76/2 206/2 | October 25th [2] 144/1 145/2 | 129/13 129/17 138/19 140/4 |
| 230/1 238/14 238/20 | odd [2] 226/14 234/8 | 147/11 148/12 155/23 155/24 |
| numbness [1] 117/11 | odor [1] 84/19 | 156/25 157/10 157/23 158/6 |
| numerous [2] 109/25 112/10 | off [25] 11/18 13/7 25/2 | 158/8 159/14 159/19 164/13 |
| nurse [10] 84/8 89/3 89/6 | 26/24 27/15 27/16 31/25 | 170/23 172/20 174/22 176/14 |
| 89/14 116/8 116/9 116/13 | 37/15 37/20 37/23 38/3 54/25 | 180/20 182/7 185/21 188/9 |
| 116/16 116/24 118/2 | 68/16 104/25 107/9 124/13 | 188/15 189/3 189/24 191/7 |
| | 128/22 143/11 149/12 154/3 | 192/15 193/2 195/3 198/20 |
| | 156/17 188/11 202/25 209/4 | 199/4 202/5 202/6 203/1 |
| | 269/25 | 203/8 203/13 203/21 203/23 |
| O | offend [1] 46/4 | 205/8 206/24 207/21 209/10 |
| o'clock [10] 27/1 78/18 78/21 | offense [1] 58/1 | 210/15 211/14 212/18 213/3 |
| 78/24 78/24 182/14 184/1 | offer [11] 5/14 27/8 68/5 | 213/5 213/12 213/15 214/3 |
| 222/18 245/13 252/21 | 69/15 159/9 159/17 177/19 | 214/17 215/12 215/17 216/23 |
| oath [2] 198/25 256/12 | 189/10 230/23 260/6 279/23 | 217/16 218/6 218/7 219/20 |
| OB [4] 43/23 143/23 146/24 | offered [18] 100/21 163/9 | 220/1 221/4 222/1 222/18 |
| 148/4 | 163/13 163/25 182/15 182/17 | 222/18 222/20 228/2 228/15 |
| OB-GYN [4] 43/23 143/23 | 184/1 185/15 191/11 193/15 | 229/12 229/17 230/3 230/14 |
| 146/24 148/4 | 213/22 213/25 257/5 257/8 | 230/16 230/18 230/19 231/6 |
| obese [1] 130/25 | 260/24 279/15 280/13 280/15 | 231/24 232/16 233/3 233/20 |
| object [11] 45/23 52/2 56/21 | offering [5] 67/24 177/13 | 235/2 235/11 237/1 237/4 |
| 59/25 111/11 143/13 259/7 | 275/21 277/25 279/21 | 237/10 237/16 237/18 237/24 |
| 266/5 274/21 274/23 274/24 | office [33] 1/21 18/18 28/14 | 238/23 240/21 245/16 248/9 |
| objected [4] 160/8 257/9 | 30/7 55/25 92/21 93/11 | 248/11 255/20 257/15 257/15 |
| 257/12 266/4 | 101/11 102/8 121/16 121/18 | 258/14 258/17 258/23 259/3 |
| objecting [4] 160/15 257/13 | 139/12 151/25 152/11 152/20 | 261/18 262/11 264/4 264/12 |
| 266/2 273/18 | 152/25 153/3 171/17 172/4 | 264/20 264/21 265/1 265/4 |

okay... [15] 265/22 267/13
 267/14 267/16 267/18 267/24
 268/20 270/21 270/25 273/14
 274/15 275/10 275/12 280/11
 280/19
 old [15] 23/16 41/18 84/3
 84/14 85/20 144/4 144/10
 149/5 149/10 150/11 150/25
 182/13 183/14 214/5 280/2
 older [2] 23/11 111/21
 Olsen [1] 1/15
 Ombudsman [3] 50/23 50/24
 51/16
 on [334]
 once [11] 20/4 28/13 49/21
 52/19 91/24 115/15 142/24
 172/3 218/21 242/5 278/13
 one [164] 1/16 1/19 4/19 4/21
 6/13 7/15 8/17 8/24 14/15
 15/24 17/17 18/24 20/2 21/25
 22/5 27/4 27/9 28/2 28/4
 28/20 28/25 29/1 33/5 33/16
 34/15 34/16 37/3 37/4 37/11
 41/11 46/10 47/22 49/5 55/25
 55/25 56/7 56/15 56/15 61/11
 63/8 64/8 64/12 64/14 64/16
 64/20 66/12 68/5 73/5 74/16
 74/17 75/12 86/22 88/23
 93/18 94/8 95/10 96/6 101/3
 102/17 104/18 105/11 107/3
 112/13 113/13 114/9 116/2
 119/7 121/19 129/3 129/3
 129/9 129/14 130/4 130/11
 134/15 137/5 137/12 141/4
 143/2 143/3 143/8 143/14
 148/13 149/18 152/14 153/6
 157/15 158/22 159/6 159/6
 159/23 160/15 161/1 164/12
 164/12 169/1 170/14 171/2
 171/17 172/3 175/2 177/24
 180/11 182/16 182/16 182/20
 184/5 184/5 185/2 185/15
 185/19 187/1 191/8 194/17
 195/8 198/1 198/14 201/18
 201/19 205/7 209/8 214/17
 215/2 215/23 215/24 216/16
 220/6 220/7 221/20 222/23
 230/2 230/2 230/2 235/6
 239/10 239/11 241/8 243/11
 243/12 246/2 246/5 246/20
 246/25 251/23 252/6 253/6
 254/5 254/19 255/5 257/24
 264/14 265/19 265/19 265/24
 267/19 269/23 272/3 272/6
 272/10 273/13 273/15 274/9
 278/4 278/15
 one's [1] 14/8
 one-bedroom [2] 137/12 149/18
 ones [2] 11/21 242/5
 ongoing [1] 128/10
 only [31] 28/7 39/5 47/18
 48/16 51/12 51/14 56/10
 61/21 62/6 113/24 120/24
 129/3 150/11 154/12 159/8
 160/4 164/3 184/21 191/23
 204/9 204/11 214/17 219/22
 245/20 247/5 247/11 261/22
 262/8 265/14 266/15 272/20
 open [9] 8/4 21/17 21/17
 21/20 47/24 54/19 57/15

68/10 71/6
 opened [4] 55/22 187/24 258/6
 259/24
 opening [4] 14/16 71/25 72/1
 73/11
 openly [1] 52/1
 opens [3] 8/5 18/22 20/2
 operations [4] 118/24 120/8
 120/12 120/16
 opinion [9] 7/15 7/16 7/21
 7/25 34/14 72/3 177/25
 264/15 265/9
 opinions [1] 34/13
 opportunity [4] 52/5 83/20
 202/16 202/18
 opposed [1] 59/18
 opposing [4] 5/23 67/4 262/5
 263/4
 opposite [5] 57/25 73/2
 111/25 114/12 212/1
 option [1] 142/25
 optional [1] 50/2
 or [234] 7/23 9/4 13/7 18/17
 22/21 25/23 25/24 27/10
 29/10 29/11 32/13 32/15 33/8
 37/21 38/19 41/9 43/6 47/12
 48/23 50/18 51/2 51/3 51/4
 51/4 51/5 51/8 51/9 51/9
 51/14 51/18 51/19 51/19
 51/25 56/8 57/24 60/19 61/13
 61/20 62/21 64/9 67/9 67/18
 68/20 71/9 71/19 72/16 73/7
 73/20 77/1 78/3 78/4 81/4
 84/7 84/8 84/8 84/24 87/10
 87/11 87/11 88/15 89/12 95/7
 96/12 97/11 102/20 103/6
 104/3 104/23 107/3 107/9
 108/11 109/15 109/23 111/21
 112/14 113/12 115/12 115/14
 115/25 116/2 116/2 116/12
 116/18 117/17 119/2 120/10
 122/9 122/16 122/22 122/25
 122/25 123/11 123/12 123/25
 124/1 124/5 124/15 124/16
 125/25 126/9 126/16 128/2
 128/18 128/22 132/7 135/9
 139/12 142/6 142/10 142/15
 143/1 145/3 146/18 147/4
 147/5 147/9 148/10 151/18
 151/18 151/18 153/16 159/10
 159/12 161/17 162/7 163/5
 163/8 163/24 164/1 164/2
 164/9 164/10 164/24 165/7
 166/2 166/19 169/15 170/8
 175/3 175/12 175/17 176/8
 176/19 177/16 178/2 180/2
 182/7 183/14 187/12 187/23
 188/6 188/18 190/13 193/10
 194/5 196/25 197/10 198/4
 199/11 200/3 200/22 201/18
 202/8 204/14 204/15 204/16
 204/25 205/14 207/21 208/10
 208/23 209/7 209/8 212/16
 215/1 215/2 215/17 216/16
 217/4 218/24 223/4 227/12
 228/1 228/6 231/21 232/4
 237/25 238/1 240/4 241/7
 242/12 244/4 244/19 244/20
 246/2 246/3 246/20 247/7
 247/10 248/23 250/24 251/6
 253/17 254/1 254/2 255/13
 255/15 255/15 255/25 256/7

256/22 259/15 260/1 261/1
 261/20 262/1 262/2 265/15
 266/21 267/7 269/12 269/23
 270/8 270/9 271/8 271/16
 272/2 272/12 273/1 275/22
 276/2 279/21 280/15 282/9
 or -- I [2] 124/5 270/8
 oral [1] 171/19
 orally [1] 247/10
 orange [1] 258/15
 order [19] 37/21 58/19 58/20
 81/18 81/20 82/10 90/9 90/10
 111/3 113/10 113/25 118/23
 163/23 164/10 173/6 215/8
 215/15 264/8 264/9
 ordered [1] 92/20
 ordinarily [1] 164/6
 organization [1] 45/15
 orientation [3] 18/7 18/8
 53/24
 Origin [2] 77/6 77/17
 original [2] 135/22 247/7
 originated [1] 175/24
 other [58] 5/18 8/12 8/17
 34/12 37/12 45/21 45/22 46/8
 46/15 50/17 61/18 70/19
 73/12 73/14 73/14 94/17 97/1
 97/24 100/5 108/24 110/16
 113/16 113/16 128/3 128/4
 148/14 153/2 153/15 161/1
 161/17 161/20 163/7 165/2
 169/1 171/21 186/12 186/25
 187/8 190/11 190/21 201/1
 202/17 218/2 218/22 228/6
 229/9 241/22 243/15 247/6
 258/8 259/1 261/1 262/12
 269/23 270/7 271/10 276/11
 280/14
 others [8] 18/11 18/15 53/3
 72/5 75/3 109/23 115/23
 153/9
 otherwise [1] 47/20
 ought [3] 46/13 261/16 278/3
 ounce [1] 208/14
 our [44] 23/12 52/23 62/9
 69/25 72/23 76/7 88/16 99/5
 100/21 103/16 103/17 110/6
 121/14 124/9 124/22 126/1
 128/13 164/13 165/6 168/18
 169/23 186/18 208/1 223/24
 223/25 226/25 240/13 240/20
 242/9 242/14 245/6 245/6
 246/4 248/19 264/18 272/21
 275/25 276/1 276/21 277/3
 278/23 278/24 280/4 281/6
 ours [2] 244/3 245/9
 out [132] 6/12 7/19 8/14 9/7
 9/8 10/23 17/11 19/21 19/25
 21/21 21/22 27/6 27/6 28/22
 28/25 29/3 30/15 30/15 31/9
 33/10 33/22 36/18 37/1 37/11
 40/5 40/14 42/1 42/5 56/1
 59/21 61/23 62/5 62/7 62/22
 77/15 78/9 79/8 79/17 79/22
 100/20 102/12 105/20 107/1
 109/17 115/19 118/8 119/12
 119/25 119/25 120/4 120/10
 120/10 121/22 121/23 122/2
 122/5 122/10 122/11 124/3
 131/7 132/12 132/24 133/14
 136/10 138/11 140/8 144/15
 145/12 148/2 149/19 150/12

| | | |
|--|--|---|
| O Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 317 of 335 | | |
| out... [61] 151/12 151/17 152/14 155/18 164/4 170/3 177/24 194/6 199/4 199/20 199/22 205/7 210/7 210/8 212/25 213/1 216/14 216/20 218/21 218/24 219/7 221/2 229/4 239/21 240/16 241/21 243/16 247/19 249/17 251/14 251/17 253/10 253/18 254/24 255/11 256/22 258/1 261/13 261/17 262/4 262/5 262/9 262/11 264/8 264/9 268/3 270/7 270/13 271/20 272/8 272/8 274/7 275/7 275/9 275/13 275/24 276/3 276/4 277/23 278/5 282/23 | 237/17 241/23 242/1 242/3 242/9 242/25 244/2 244/5 244/13 244/16 246/20 248/5 248/8 254/20 256/18 256/19 257/3 258/18 258/18 258/19 258/24 259/2 259/12 262/5 262/13 263/12 264/12 264/13 264/18 266/2 267/6 267/6 267/20 271/2 271/3 273/2 273/16 273/17 Page 000974 [1] 91/15 Page 002781 [1] 48/9 Page 10 [1] 227/25 Page 191 [1] 165/18 Page 2 [1] 27/25 Page 20 [1] 267/6 Page 21 [1] 267/6 Page 27 [1] 267/20 Page 286 [1] 126/19 Page 287 [1] 127/12 Page 29 [1] 92/17 Page 296 [1] 126/12 Page 40 [1] 271/2 Page 43 [1] 271/3 Page 47 [1] 273/2 Page 48 [1] 273/17 Page 49 [1] 273/16 Page 6 [2] 257/3 258/18 Page 7 [1] 258/24 Page 8 [1] 258/18 Page 878 [1] 77/4 Page 879 [1] 76/20 Page 9 [1] 258/19 pages [9] 120/24 121/3 201/5 202/8 242/2 246/10 256/21 256/22 258/24 Pages 6 [1] 258/24 pain [4] 20/17 83/7 84/1 84/15 painful [1] 13/12 Panakkal [1] 204/3 pants [1] 19/24 paper [2] 16/14 133/10 Papilloma [1] 142/14 parading [2] 278/25 280/6 paragraph [26] 48/9 48/10 49/10 50/12 78/10 78/11 80/19 88/19 88/25 89/21 92/4 107/24 108/1 108/17 108/21 114/20 115/1 117/9 190/12 190/16 190/18 191/7 191/25 224/18 239/23 239/24 Paragraph 10 [1] 49/10 Paragraph 5 [1] 50/12 Paragraph 9 [2] 239/23 239/24 paralegal [2] 243/4 244/4 paramedic [1] 84/7 parameters [1] 124/10 Pardon [8] 79/4 79/21 114/18 156/5 165/14 171/24 212/6 236/24 paren [2] 190/7 190/8 parenthesis [2] 117/12 117/14 parents [10] 39/12 40/2 110/2 110/5 110/8 110/9 110/14 113/16 116/2 117/23 parents' [1] 40/12 parking [1] 79/22 Parnell [1] 19/7 part [39] 12/22 14/21 35/18 40/19 43/11 82/20 87/3 87/8 88/11 88/16 92/11 98/14 | 113/5 114/9 114/21 116/13 117/18 123/10 123/13 123/16 128/9 130/13 130/17 133/14 133/18 138/25 140/25 144/4 186/11 186/23 190/11 223/24 224/14 227/13 243/8 243/9 261/16 276/1 276/20 participating [1] 51/19 participation [1] 52/8 particular [6] 5/17 74/17 148/4 237/5 251/1 268/20 particularly [1] 268/25 partied [1] 179/12 parties [2] 217/8 272/5 partner [3] 278/21 281/14 281/25 parts [3] 95/14 257/23 257/24 party [24] 50/18 51/3 51/6 208/18 211/4 211/5 211/8 211/24 213/6 213/18 213/21 213/25 214/13 218/11 218/12 218/14 219/4 219/23 220/23 221/22 222/3 238/1 280/18 280/22 Paskowitz [1] 38/16 pass [3] 252/4 264/14 274/18 passage [2] 160/23 258/17 passed [8] 119/25 128/23 169/5 170/15 275/8 275/12 275/24 278/5 passenger [1] 19/6 passing [5] 120/10 121/23 144/15 184/11 205/20 past [6] 75/12 85/5 110/16 121/11 124/21 271/7 Pasta [1] 114/4 patches [1] 110/9 patently [1] 111/12 patient [30] 83/6 84/12 84/23 107/4 109/4 109/22 109/25 112/10 113/8 115/3 144/14 144/21 144/25 182/15 182/19 182/21 183/25 184/4 184/6 185/14 185/15 185/18 185/20 195/10 272/8 275/7 275/8 275/9 275/14 281/24 patient's [2] 116/8 117/9 patients [1] 150/23 pattern [2] 150/18 278/23 Patty [5] 102/7 102/18 103/5 247/20 249/11 Paxil [2] 41/1 41/2 pay [1] 138/3 paying [1] 217/15 payments [1] 132/24 PC [1] 1/15 peace [1] 140/23 pectoral [3] 35/24 36/1 36/4 peers [1] 52/25 Pelot [13] 90/21 92/5 92/8 92/19 92/21 93/6 93/8 93/14 93/16 93/17 94/9 95/18 163/11 penetrated [1] 13/20 penetration [1] 66/16 Pennsylvania [1] 1/22 people [36] 7/15 7/17 26/12 29/25 32/3 47/13 54/9 56/11 70/7 72/10 73/14 82/10 84/1 86/13 115/15 142/9 153/2 153/15 161/17 173/3 173/7 173/10 173/22 174/6 174/11 |
| out-of-court [2] 164/4 253/18 | | |
| outbreak [1] 137/18 | | |
| outbreaks [1] 275/2 | | |
| outcome [1] 52/25 | | |
| outer [1] 11/22 | | |
| outlashes [1] 110/18 | | |
| outside [18] 27/2 28/9 41/14 60/21 79/14 107/9 166/19 187/10 187/17 206/6 211/16 225/12 226/3 226/16 226/18 226/20 226/21 226/25 | | |
| outstanding [1] 99/14 | | |
| outweigh [3] 280/9 280/23 282/18 | | |
| outweighs [4] 280/16 280/21 282/9 282/10 | | |
| over [37] 9/18 17/10 21/7 21/16 22/10 24/15 32/13 32/19 34/22 37/19 40/18 74/7 77/1 82/13 82/14 86/23 87/20 92/11 98/10 106/10 115/22 133/22 147/12 164/20 182/11 189/4 209/4 240/4 242/6 242/13 243/24 252/3 256/13 256/20 256/23 267/17 272/17 | | |
| overcome [1] 40/20 | | |
| overnight [2] 137/21 138/7 | | |
| overseas [1] 53/17 | | |
| own [6] 16/4 69/19 112/16 225/18 261/7 279/9 | | |
| P | | |
| P-U-P-P [1] 77/18 | | |
| p.m [10] 27/1 85/22 100/24 136/19 155/16 164/14 164/14 185/14 222/21 250/19 | | |
| PA [1] 175/15 | | |
| pacing [1] 18/23 | | |
| packed [1] 33/16 | | |
| page [103] 3/2 14/25 15/1 15/4 15/12 15/13 15/16 15/17 18/2 18/12 18/13 18/16 27/23 27/25 29/7 48/9 49/11 73/4 76/1 76/10 76/20 77/4 77/5 80/15 85/7 88/5 91/15 91/16 92/3 92/17 93/4 105/16 106/7 107/6 108/15 112/6 119/21 120/23 120/25 121/5 121/10 126/12 126/19 127/12 135/10 135/20 136/17 140/18 141/1 156/11 157/2 165/18 169/20 184/25 202/3 202/8 202/15 210/18 210/25 225/9 227/25 228/1 231/3 234/3 236/5 | | |

| P Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 318 of 335 | | |
|--|--|---|
| people... [11] 187/8 196/2 206/4 206/12 208/23 208/23 209/7 211/15 215/25 216/6 216/22 per [2] 5/25 115/8 perceive [4] 72/5 73/13 73/14 73/16 perceived [1] 117/20 percent [6] 64/25 70/20 165/13 165/15 166/8 277/7 perfect [3] 8/3 35/22 47/4 perfectly [1] 116/14 performed [2] 13/22 13/22 performing [1] 16/17 perhaps [6] 80/23 82/14 133/3 149/3 229/15 269/14 period [4] 77/25 152/17 219/22 224/10 periods [2] 120/6 122/2 permitted [2] 74/18 262/10 person [40] 5/1 29/24 32/23 33/6 37/13 50/17 51/5 64/16 90/23 102/14 103/5 162/8 172/21 172/24 172/25 172/25 173/2 173/23 173/24 174/1 184/18 187/19 192/10 192/22 193/5 194/4 194/10 194/13 194/14 194/16 217/11 217/12 223/9 228/16 236/9 251/23 251/24 254/1 256/14 263/8 personal [4] 6/4 33/15 70/13 98/23 personally [1] 70/15 personnel [3] 79/8 159/1 159/3 persons [1] 253/24 pertaining [1] 202/10 pertains [2] 125/4 190/4 Pete [49] 11/2 26/13 26/15 28/10 28/12 28/14 29/11 158/5 172/24 173/1 173/4 173/7 174/1 174/3 174/13 175/5 175/6 175/24 176/1 177/3 178/5 178/10 179/11 179/12 181/22 183/4 183/20 184/10 184/12 184/21 184/24 187/17 188/17 193/8 198/14 205/14 205/14 231/14 232/7 232/10 236/5 267/22 268/7 268/11 268/12 268/14 268/16 269/14 270/1 Pete's [1] 269/9 petty [5] 90/21 92/5 92/7 92/18 94/9 Phenergan [2] 117/13 183/1 phone [36] 21/22 22/3 22/6 25/19 25/21 31/5 36/18 42/10 145/5 146/10 187/18 205/22 205/23 206/7 211/23 212/10 212/20 228/10 228/13 229/16 230/1 230/4 230/8 230/11 230/12 238/24 239/4 240/13 240/16 240/17 249/14 249/25 250/12 251/18 252/2 253/23 photo [2] 62/17 62/25 photograph [8] 59/22 60/13 60/14 61/23 62/15 63/3 170/5 176/20 photographer [2] 60/11 62/15 photographs [5] 13/4 42/24 | 43/3 43/5 43/11 photophobia [1] 107/20 phrase [4] 66/5 149/15 186/15 213/17 phrased [1] 220/15 physical [10] 82/20 115/3 115/8 115/12 115/12 115/24 116/1 116/4 118/3 182/22 physically [4] 76/24 76/25 80/11 203/23 physician [9] 39/5 85/9 109/18 111/8 111/18 114/11 117/16 117/20 191/10 physicians [2] 38/14 119/19 pick [1] 152/7 picked [5] 29/11 36/13 82/24 178/5 227/10 picking [2] 180/12 227/10 picnic [3] 187/10 216/11 216/13 picture [26] 37/13 60/1 60/2 60/3 60/6 60/7 60/9 60/22 61/6 140/7 147/13 156/14 156/21 157/7 157/12 157/13 157/14 169/12 169/13 169/14 170/7 170/14 170/17 171/7 171/8 180/25 pictures [14] 11/23 12/1 12/2 129/6 136/5 156/1 156/6 157/17 168/19 168/19 168/20 168/21 169/5 169/5 piece [2] 69/15 133/10 pieces [2] 17/10 18/19 pink [2] 266/3 266/4 place [10] 93/9 95/13 96/19 139/12 163/12 180/10 224/25 236/15 256/24 261/7 placed [2] 81/5 90/7 places [2] 206/5 272/24 placing [1] 256/16 plain [1] 183/19 plaintiff [8] 1/3 1/13 101/24 103/23 160/5 257/7 275/1 275/13 plaintiffs [2] 257/10 259/11 plaintiffs' [8] 3/3 59/15 59/18 63/5 71/8 135/17 192/17 245/17 plan [2] 50/25 51/20 planned [5] 97/21 98/4 98/8 98/9 99/4 plans [1] 98/19 planted [2] 115/15 117/24 plastic [2] 34/4 217/7 play [9] 62/8 123/10 123/12 123/16 123/22 130/13 130/17 133/18 205/3 played [5] 27/1 67/15 69/1 69/3 205/12 playing [10] 63/22 65/15 65/21 66/3 66/10 66/23 67/10 67/12 67/21 205/6 plea [2] 4/21 5/14 pleaded [1] 104/3 pleadings [2] 104/4 104/7 please [82] 9/21 17/25 22/22 22/25 26/2 37/7 48/8 50/12 58/22 59/2 59/20 63/11 63/13 71/5 71/10 71/18 72/23 72/23 75/15 75/19 75/20 76/5 77/13 80/15 80/17 80/18 80/22 82/18 82/19 85/5 85/15 88/17 | 88/25 93/4 93/20 93/22 95/25 99/10 99/12 100/9 105/24 106/2 106/4 106/6 106/7 107/13 125/15 126/18 129/14 133/5 135/20 143/5 143/5 151/7 155/6 157/12 158/14 164/18 166/3 176/3 176/5 181/14 185/8 189/18 198/18 198/21 198/22 207/4 211/19 224/2 224/4 224/6 225/23 228/24 229/3 231/2 231/3 232/4 240/10 264/10 278/10 281/18 pled [2] 5/14 104/3 plenty [1] 184/14 PLLC [1] 1/21 Poe [23] 30/10 31/8 31/10 31/12 55/21 101/8 101/19 102/1 102/4 102/11 102/25 103/1 103/15 248/12 249/3 249/16 250/12 251/20 253/10 253/11 253/11 253/16 253/17 Poe's [7] 30/7 101/18 102/7 102/17 247/20 248/6 253/22 Poetry [2] 31/11 31/12 point [54] 4/11 5/17 6/2 11/5 24/23 32/10 41/25 59/12 67/6 78/9 79/13 79/15 86/12 99/24 107/7 108/21 111/23 116/10 124/10 124/21 132/6 134/5 137/4 137/20 138/6 139/9 158/12 158/13 160/24 163/19 167/16 179/7 194/25 205/22 206/15 210/1 213/2 216/11 217/16 222/12 224/11 239/17 252/22 254/13 262/3 262/17 266/12 276/21 277/23 278/23 280/8 282/2 282/22 282/23 pointed [2] 149/21 199/22 pointing [1] 199/20 points [2] 6/3 164/22 poisoning [1] 110/20 poker [1] 104/22 poker-faced [1] 104/22 police [10] 6/22 6/23 7/20 72/9 77/18 79/15 80/3 86/4 86/10 86/25 policies [2] 266/16 267/11 policy [3] 7/5 57/16 267/8 poor [1] 77/11 Porter [2] 2/5 270/9 portion [16] 16/1 68/4 69/12 74/17 77/5 82/18 127/2 138/22 177/5 185/7 201/3 201/10 202/9 255/23 259/5 275/8 portions [2] 100/2 159/9 posed [2] 109/4 266/18 poses [1] 43/3 position [17] 8/1 8/6 25/10 84/12 134/11 175/6 175/9 175/13 175/23 218/20 246/19 247/4 254/23 255/11 257/19 269/2 269/3 positions [1] 255/12 positive [2] 147/5 155/19 possibility [1] 108/22 possible [13] 101/13 106/18 106/21 108/8 118/10 133/23 144/19 145/14 182/23 198/23 229/6 278/22 281/24 possibly [12] 20/6 20/7 |

| P Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 319 of 335 | | |
|--|--|---|
| possibly... [10] 168/22 170/4 173/3 247/22 249/18 249/20 251/5 251/7 259/14 265/14 post [10] 34/18 38/8 38/14 39/7 39/8 39/16 40/15 40/17 43/14 96/7 post-them [1] 43/14 post-traumatic [9] 34/18 38/8 38/14 39/7 39/8 39/16 40/15 40/17 96/7 posted [2] 43/7 43/14 postoperative [1] 35/19 poured [1] 208/10 practice [4] 50/22 50/24 51/16 148/2 Pre [1] 82/23 Pre-hospital [1] 82/23 predated [1] 140/10 predicate [1] 154/21 predisposition [1] 280/16 prefer [1] 104/3 preferably [1] 101/14 pregnant [8] 86/1 86/16 87/9 87/13 87/16 87/18 87/22 88/1 prejudice [11] 258/2 280/6 280/9 280/10 280/17 280/22 280/23 280/25 281/1 281/3 282/19 prejudicial [14] 9/1 60/2 60/8 60/17 61/3 61/7 261/23 264/16 272/14 273/4 279/17 282/6 282/20 282/21 prepared [3] 5/3 5/11 236/10 preparing [1] 130/11 prescribed [1] 41/1 presence [3] 102/17 107/9 148/18 present [29] 9/20 22/24 58/25 63/12 84/24 85/18 94/18 99/11 100/25 106/1 113/3 113/11 121/9 121/12 135/2 135/6 146/17 149/2 158/16 161/22 164/15 177/12 177/15 177/17 185/19 222/22 224/5 238/1 240/11 presentation [1] 53/15 presented [4] 85/20 107/16 162/11 163/5 presents [2] 83/6 144/10 preserve [1] 141/12 press [1] 36/13 pressure [2] 137/14 191/24 pressuring [4] 191/17 192/22 194/9 197/23 presumably [2] 146/9 214/8 pretend [4] 123/4 123/8 124/11 137/15 pretended [2] 107/3 141/19 pretending [6] 115/14 133/15 137/15 141/19 156/15 156/21 pretrial [2] 109/14 244/25 pretty [23] 30/16 30/19 48/19 67/22 87/6 95/10 98/23 124/3 128/15 128/20 129/11 148/6 149/20 153/14 154/3 156/23 157/1 166/7 213/20 215/14 222/15 234/19 265/12 pretyped [2] 186/5 186/5 previous [5] 9/15 178/7 204/6 207/12 228/16 | previously [4] 10/1 177/2 239/6 277/9 principle [1] 280/12 print [1] 133/14 prior [15] 14/7 39/15 54/5 69/13 145/3 163/19 182/16 184/5 191/12 191/14 194/4 205/17 275/22 279/7 279/18 pristine [1] 8/2 pro [2] 123/8 137/6 probably [32] 4/6 19/25 31/13 37/24 41/14 66/25 67/7 70/17 87/2 87/25 90/5 90/18 91/20 91/24 95/21 113/19 116/5 126/9 126/10 134/4 156/3 156/6 180/3 191/2 205/9 234/19 238/6 239/14 255/6 255/7 265/3 273/23 probative [8] 9/2 62/11 261/24 278/5 280/9 280/16 282/5 282/18 problem [16] 50/7 63/4 83/10 91/11 91/21 125/19 128/10 142/7 177/21 185/5 190/14 199/5 199/21 202/24 213/14 232/1 problematic [1] 246/11 problems [3] 54/2 107/21 266/17 proceed [5] 9/24 14/22 176/18 203/3 203/5 proceeding [3] 47/20 51/9 51/19 proceedings [3] 1/24 283/1 283/4 process [4] 50/20 51/7 51/19 82/8 processing [2] 190/3 190/12 produced [6] 1/24 14/4 67/15 67/16 98/6 98/21 product [1] 7/11 professor [2] 55/8 55/14 professorship [1] 255/24 proffer [1] 267/1 profit [1] 45/15 profound [1] 148/16 program [15] 48/16 50/15 50/16 50/17 50/19 50/20 50/21 51/3 51/4 51/6 51/7 51/11 51/12 51/14 261/16 progress [2] 125/25 222/11 progressed [1] 142/21 progresses [1] 110/4 prominently [2] 260/9 260/13 promiscuity [1] 282/15 promise [3] 170/6 232/1 282/15 prompted [1] 237/4 pronounce [3] 77/19 80/5 80/7 pronounces [1] 204/21 proof [5] 103/23 103/25 104/9 104/12 249/1 proper [1] 247/14 protect [2] 94/16 141/25 protected [1] 28/8 protection [1] 190/25 protective [3] 90/10 143/1 151/15 protector [3] 21/13 86/25 94/11 protectors [2] 41/10 41/11 prove [6] 6/25 163/9 163/13 | proved [1] 73/6 provide [7] 51/8 71/3 104/2 181/24 204/3 247/10 277/13 provided [1] 247/14 provision [10] 49/25 49/25 50/1 50/3 50/10 50/14 51/17 52/16 70/16 70/18 provisions [1] 70/12 provocatively [1] 260/7 proximity [2] 177/13 282/12 psychiatric [1] 110/11 psychiatrist [2] 31/22 40/25 psychological [2] 39/10 109/24 psychologist [3] 109/8 109/11 111/9 psychosocial [3] 108/23 109/25 112/10 psychosomatic [15] 39/19 39/20 40/8 40/9 105/14 106/17 106/21 106/24 106/25 107/2 108/22 116/12 118/1 118/7 118/10 PTSD [4] 39/16 40/18 54/22 55/10 pubic [1] 13/7 public [6] 32/11 32/14 35/23 47/20 52/20 84/11 publicly [3] 41/8 41/12 58/16 publish [2] 201/2 203/4 published [1] 206/22 pull [3] 19/20 62/17 91/6 pulled [1] 61/23 puncture [1] 108/5 punish [1] 56/25 punishable [1] 5/24 Pupp [1] 77/18 purely [1] 134/16 purport [2] 244/15 245/13 purported [1] 105/20 purports [1] 129/21 purpose [4] 103/8 271/14 271/15 271/25 purposes [1] 51/2 pursuant [6] 49/24 159/13 159/23 160/14 160/20 177/20 push [1] 21/17 pushed [2] 36/25 37/11 put [45] 8/6 8/15 12/5 13/10 13/12 13/15 17/24 26/1 37/6 61/6 68/8 76/10 82/17 83/16 84/25 100/8 100/17 106/15 126/16 126/18 126/19 133/4 134/7 143/18 154/13 155/5 165/5 169/10 176/3 176/6 185/3 189/17 197/21 197/22 197/22 206/2 215/15 216/13 217/18 225/9 228/23 231/2 242/12 262/8 262/9 puts [3] 11/16 18/22 195/10 putting [7] 17/10 26/4 98/23 154/16 191/21 201/23 215/8 puzzled [1] 273/10 |
| Q | | |
| quality [4] 60/13 60/14 62/18 62/19 quarrel [1] 81/17 quash [2] 101/8 103/2 question [58] 8/12 69/17 83/25 94/21 103/20 112/12 | | |

question... [52] 112/16
 118/18 120/5 125/4 127/6
 127/7 127/10 127/14 127/19
 137/19 138/5 141/18 147/11
 150/4 150/10 151/23 156/20
 165/18 165/24 167/18 167/24
 175/21 183/3 184/17 186/15
 187/21 189/1 195/2 195/3
 198/19 198/20 198/23 199/6
 199/9 199/16 203/5 213/13
 219/1 226/13 227/2 243/9
 244/10 252/8 257/6 264/20
 265/5 266/9 266/9 267/9
 267/12 267/24 278/8
 questionable [1] 115/7
 questioned [5] 39/19 207/7
 207/11 228/3 237/22
 questioning [9] 19/11 19/12
 19/18 19/18 52/3 109/6
 120/11 202/25 272/14
 questions [27] 4/11 69/16
 69/24 71/19 71/21 83/23
 94/17 97/3 147/18 148/22
 149/21 152/1 171/15 171/18
 182/12 186/19 192/25 193/1
 203/10 203/12 203/21 220/11
 234/23 245/2 245/3 248/24
 266/18
 quick [2] 58/18 145/14
 quickly [5] 124/3 155/12
 162/2 164/23 165/16
 quid [2] 123/8 137/6
 quiet [2] 59/1 59/2
 quit [1] 165/7
 quite [12] 13/18 17/2 38/19
 39/2 42/8 71/20 118/9 131/17
 258/20 269/7 274/17 279/23
 quo [2] 123/8 137/6
 quote [29] 77/24 78/1 81/5
 84/11 84/16 84/17 85/19
 93/22 93/24 93/24 93/25
 93/25 94/1 94/2 94/3 94/3
 94/4 94/5 94/6 94/7 112/9
 113/6 160/9 160/13 182/16
 182/16 184/4 184/5 184/5

R

RA [6] 92/18 93/16 207/7
 228/3 228/4 237/20
 raise [1] 203/2
 raised [1] 183/3
 rampant [1] 54/2
 ran [4] 27/2 79/9 79/16
 108/4
 Randall [1] 272/21
 random [1] 192/9
 rape [20] 11/15 16/17 18/22
 18/24 19/7 34/7 34/20 38/2
 54/6 66/13 66/18 66/19 66/20
 66/21 181/6 182/23 190/3
 190/12 237/8 272/23
 raped [19] 17/12 21/7 22/7
 22/9 26/14 28/15 32/3 53/6
 64/3 64/6 64/24 66/7 157/25
 215/14 226/15 233/23 233/24
 236/25 250/18
 raping [4] 63/18 235/8 235/8
 235/15
 rapist [2] 226/19 237/6
 rather [12] 9/15 48/16 51/11

51/12 98/18 106/10 109/18
 117/21 118/7 176/4 262/15
 266/9
 reach [1] 45/2
 reacted [1] 149/13
 reaction [2] 117/13 150/7
 read [42] 8/23 16/14 26/21
 26/25 49/24 50/13 77/15
 77/15 80/24 87/3 89/22 91/21
 92/15 95/17 107/25 108/1
 108/3 109/3 112/11 118/13
 121/14 121/16 127/24 127/24
 138/22 159/24 160/23 162/4
 177/2 177/5 189/12 199/6
 200/20 202/16 202/18 215/13
 239/14 240/1 256/25 268/15
 273/17 279/3
 reader [1] 184/10
 reading [6] 27/25 31/23
 175/18 269/11 269/12 278/13
 reads [3] 50/10 50/15 51/17
 ready [8] 29/12 76/9 76/13
 80/25 105/1 106/14 139/20
 262/20
 real [2] 126/8 236/9
 reality [1] 134/2
 realize [4] 131/12 171/8
 195/23 223/1
 realized [1] 194/19
 really [64] 7/7 20/17 20/23
 21/20 22/10 26/25 29/21
 35/21 35/22 36/3 40/22 42/6
 43/18 44/23 49/25 50/2 62/13
 63/7 84/3 92/9 93/22 94/3
 101/21 116/5 120/8 120/21
 123/1 125/8 125/9 125/9
 126/3 127/15 131/18 131/19
 132/12 148/7 150/2 153/23
 155/15 157/9 166/8 198/18
 206/5 213/2 219/5 219/18
 223/2 231/20 231/23 232/20
 232/21 234/24 235/3 235/5
 237/7 252/1 258/23 260/20
 261/2 261/22 264/23 268/5
 271/25 274/25
 reason [28] 62/5 62/6 62/25
 86/14 96/20 98/5 113/18
 145/13 145/20 148/3 163/3
 187/20 191/24 196/25 197/3
 219/12 219/15 229/19 233/13
 233/17 235/13 254/12 262/16
 270/1 272/17 278/13 280/5
 282/8
 reasonable [1] 184/10
 reasons [4] 220/22 248/17
 259/24 261/10
 rebut [3] 164/1 164/10 260/24
 recall [67] 8/22 10/5 15/19
 18/6 18/8 18/9 39/17 71/24
 72/3 72/6 72/7 72/13 72/16
 73/17 78/2 79/25 80/1 85/13
 93/14 93/16 106/14 106/16
 107/21 109/14 115/9 119/19
 119/25 120/11 122/24 156/19
 165/3 166/21 168/23 172/6
 172/13 178/22 179/1 179/4
 179/6 179/8 179/19 180/9
 181/4 181/12 190/23 210/2
 210/8 210/10 211/4 215/21
 217/10 219/20 219/24 224/15
 224/25 225/4 228/6 238/3
 238/15 238/16 238/19 239/12

239/13 268/20 269/21 272/19
 281/15
 recalled [10] 209/13 210/4
 213/7 217/22 220/1 228/4
 228/5 238/12 238/18 239/5
 recalling [1] 218/22
 recalls [1] 268/5
 recantation [1] 95/1
 recanted [1] 94/13
 recanting [2] 94/24 163/16
 receive [3] 101/4 245/3 245/7
 received [13] 40/16 101/7
 101/10 102/6 103/1 214/13
 215/18 222/25 238/2 240/13
 249/14 250/14 274/2
 receiving [8] 71/6 71/7
 112/20 158/24 238/16 238/16
 239/5 244/13
 recent [2] 164/1 164/11
 recently [2] 144/14 243/24
 recess [7] 22/23 58/24 100/24
 164/14 222/21 248/20 248/23
 recites [1] 112/1
 recognize [5] 12/8 129/20
 175/17 176/25 181/19
 recollection [4] 130/10
 186/20 216/8 233/10
 reconceptualized [1] 6/17
 reconstructive [8] 34/10
 34/15 34/17 37/3 37/10 37/14
 38/7 42/17
 record [39] 4/24 5/20 8/2
 10/10 11/6 15/23 26/22 67/14
 67/20 74/25 82/9 89/23 99/2
 101/2 104/25 105/15 106/22
 107/9 108/19 109/2 110/24
 111/19 115/20 122/6 143/11
 143/23 144/1 144/6 146/17
 154/18 185/22 230/9 239/15
 241/4 269/11 269/12 269/19
 278/7 283/4
 recorded [6] 1/24 79/16 82/13
 95/2 95/7 187/22
 records [20] 5/22 14/21 16/8
 40/8 72/9 72/9 75/1 81/21
 96/18 97/3 98/16 98/22 98/24
 106/20 198/5 199/12 212/11
 212/19 228/10 261/7
 recount [1] 204/6
 recounted [1] 210/21
 recreational [1] 84/11
 recreational/public [1] 84/11
 red [6] 15/8 156/23 157/1
 157/9 157/22 217/4
 redact [7] 68/18 68/22 99/19
 99/20 105/5 105/17 276/10
 redacted [10] 75/3 100/6
 100/15 105/11 143/8 161/12
 241/9 241/9 277/25 279/15
 redaction [10] 74/25 75/2
 100/22 105/2 107/8 143/9
 241/11 276/13 276/14 277/1
 redirect [3] 192/17 199/4
 280/5
 redo [2] 242/13 242/14
 reference [18] 50/25 61/1
 61/7 67/7 92/4 100/3 100/16
 100/19 121/15 121/17 155/25
 235/17 235/19 247/16 273/3
 273/5 273/8 280/8
 referenced [2] 68/13 68/14
 references [8] 99/20 242/18

| R Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 321 of 335 | | | Representative [1] 248/6 |
|---|-------------------------------|--------------------------------|--------------------------|
| references... [6] 243/16 | 182/3-182/19 187/14 187/25 | Representative Poe's [1] 248/6 | |
| 244/14 245/18 245/21 245/23 | 199/20 208/13 209/11 209/9 | representing [6] 242/18 | |
| 247/5 | 211/12 212/25 214/21 214/22 | 242/22 270/9 270/12 273/3 | |
| referred [1] 241/5 | 214/23 215/20 216/7 216/14 | 273/6 | |
| referring [6] 106/22 108/18 | 216/17 217/6 221/5 225/3 | represents [2] 273/7 273/11 | |
| 168/8 196/19 225/16 258/17 | 225/7 226/8 229/25 231/19 | reputation [7] 5/7 6/9 7/8 | |
| refers [5] 77/21 105/21 111/2 | 231/21 231/23 232/13 232/19 | 7/11 103/22 104/12 104/14 | |
| 111/17 210/15 | 232/20 232/21 233/8 234/15 | request [3] 51/14 102/16 | |
| refreshes [1] 165/17 | 234/16 234/17 236/18 236/20 | 205/25 | |
| refreshing [1] 166/21 | 238/20 245/1 275/9 275/13 | requested [4] 4/10 80/9 80/10 | |
| refuge [1] 45/17 | 275/14 275/24 276/19 277/2 | 283/1 | |
| refute [3] 251/3 251/5 251/7 | 278/8 278/17 278/22 279/25 | requesting [2] 190/2 190/11 | |
| regard [4] 44/15 175/13 | 281/17 281/17 281/21 | requests [1] 51/2 | |
| 195/22 242/21 | remembered [3] 32/25 95/18 | require [3] 75/2 75/22 133/13 | |
| regarding [10] 94/23 105/19 | 168/1 | required [5] 123/4 123/6 | |
| 108/16 109/18 152/9 161/21 | remembering [2] 166/8 188/22 | 124/11 142/22 276/9 | |
| 163/12 171/16 206/19 273/20 | remembers [6] 25/24 93/19 | requirement [1] 52/9 | |
| Regardless [1] 82/2 | 185/18 268/10 269/4 270/3 | requires [1] 105/2 | |
| regards [1] 44/14 | reminded [3] 38/6 43/20 | requiring [1] 84/12 | |
| regional [1] 204/2 | 272/16 | rescue [1] 55/22 | |
| regular [1] 143/23 | reminder [5] 129/21 133/8 | rescued [2] 251/12 251/12 | |
| related [7] 5/15 5/20 6/20 | 133/13 135/1 135/7 | research [1] 162/5 | |
| 8/18 50/21 102/3 220/2 | reminders [3] 130/11 130/16 | reserve [1] 282/25 | |
| relating [3] 82/10 183/20 | 133/21 | residual [1] 163/17 | |
| 259/16 | reminding [2] 133/9 135/6 | resistant [1] 109/6 | |
| relation [1] 109/5 | remove [3] 93/22 113/9 242/17 | resolution [6] 50/15 50/19 | |
| relations [3] 57/19 142/9 | removed [3] 93/13 242/21 | 51/7 51/11 62/3 63/9 | |
| 142/10 | 242/24 | resolve [4] 131/5 224/3 246/2 | |
| relationship [18] 110/1 110/5 | renew [1] 59/11 | 259/20 | |
| 110/7 123/3 125/24 133/17 | repeat [2] 53/1 184/17 | resolved [1] 117/14 | |
| 134/16 134/21 137/3 141/6 | repeatedly [3] 66/7 273/11 | respect [6] 101/18 134/11 | |
| 141/11 141/11 142/21 147/14 | 282/3 | 177/23 218/25 228/22 275/18 | |
| 147/15 152/15 153/25 165/19 | repetition [1] 163/15 | Respectfully [1] 244/24 | |
| relatively [1] 208/16 | rephrase [1] 191/14 | respond [6] 83/22 138/20 | |
| relay [1] 239/10 | replace [1] 139/24 | 147/18 199/3 243/21 245/6 | |
| relayed [3] 11/2 198/15 | replied [1] 234/10 | responded [3] 84/11 190/24 | |
| 198/15 | reply [1] 231/24 | 191/1 | |
| relevance [5] 59/19 255/13 | report [57] 57/9 81/14 82/24 | responders [1] 159/2 | |
| 255/14 255/16 257/13 | 89/10 92/17 92/20 94/6 96/20 | response [23] 50/4 92/6 136/8 | |
| relevant [9] 101/19 110/3 | 99/15 100/2 100/6 109/21 | 136/9 138/23 139/7 167/24 | |
| 253/24 254/1 256/14 259/8 | 112/1 112/12 112/17 112/19 | 171/17 186/18 210/6 210/17 | |
| 271/6 273/9 277/3 | 112/20 112/23 113/25 158/20 | 233/1 233/1 233/4 233/8 | |
| reliable [1] 127/22 | 158/21 158/25 160/1 160/2 | 234/4 234/8 234/22 236/5 | |
| Relieved [2] 30/13 30/14 | 160/3 160/5 160/9 160/12 | 236/14 259/9 265/1 265/4 | |
| rely [3] 53/18 53/21 126/2 | 160/16 160/17 160/19 160/25 | responses [1] 253/25 | |
| relying [1] 47/9 | 160/25 161/2 161/8 161/8 | responsible [1] 61/10 | |
| remain [1] 93/9 | 161/9 161/11 161/16 161/22 | responsive [4] 260/20 261/3 | |
| remainder [1] 49/24 | 162/5 162/12 163/4 191/4 | 261/12 261/21 | |
| remains [1] 114/13 | 191/19 196/2 200/22 201/3 | responsively [1] 198/23 | |
| remarkable [1] 282/12 | 201/6 215/1 219/3 219/20 | rest [7] 11/3 158/19 191/3 | |
| remarkably [1] 282/16 | 227/24 251/1 251/8 277/10 | 224/17 242/8 245/14 274/11 | |
| remedy [2] 49/13 101/16 | 277/10 | restate [1] 191/14 | |
| remember [125] 10/7 17/2 | reported [23] 50/21 57/13 | restraining [1] 90/8 | |
| 17/16 17/19 17/20 27/13 28/5 | 57/14 57/21 77/2 78/11 85/25 | result [6] 5/14 70/22 90/7 | |
| 28/7 28/11 29/11 29/12 30/1 | 86/7 96/16 107/19 113/7 | 95/11 131/14 279/18 | |
| 30/2 31/3 31/3 37/19 38/19 | 114/10 115/7 115/25 116/24 | resulted [3] 4/19 4/21 36/5 | |
| 39/18 41/24 42/19 43/6 63/18 | 121/24 175/9 175/24 191/9 | resulting [2] 113/23 160/13 | |
| 73/11 85/10 90/21 90/23 | 195/25 196/9 211/3 275/23 | resume [7] 23/1 63/14 70/4 | |
| 90/24 92/7 94/1 107/23 | reporter [5] 2/12 159/10 | 106/3 164/17 222/24 224/7 | |
| 116/23 120/17 120/21 121/23 | 225/23 232/6 283/9 | resumed [3] 167/15 167/17 | |
| 122/8 122/23 123/1 126/3 | Reporter's [1] 283/3 | 167/22 | |
| 128/11 129/4 130/13 131/15 | reporting [13] 86/15 92/18 | retaliation [3] 24/12 51/18 | |
| 133/19 133/20 134/23 139/10 | 115/13 119/12 119/19 119/25 | 56/5 | |
| 139/16 139/16 139/17 140/4 | 159/10 186/12 193/5 194/4 | retracted [1] 94/12 | |
| 140/5 140/5 140/14 140/14 | 194/14 194/16 276/22 | retribution [1] 24/12 | |
| 145/15 145/18 145/20 149/1 | reports [12] 72/10 109/25 | return [4] 32/13 157/23 | |
| 149/3 151/3 157/24 169/7 | 110/10 112/9 116/14 144/14 | 218/11 221/22 | |
| 169/7 173/14 173/15 173/19 | 159/22 275/1 275/2 275/7 | returned [9] 44/9 211/4 211/7 | |
| 173/22 178/9 178/10 178/15 | 275/8 281/24 | 211/15 211/22 213/8 214/8 | |
| 178/21 178/23 180/3 182/2 | represent [2] 61/8 61/10 | 220/23 221/12 | |
| | representations [2] 53/18 | returning [6] 211/4 211/9 | |
| | 53/21 | | |

| R Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 322 of 335 | | |
|---|--|---|
| <p>returning... [4] 213/6 213/18 218/11 239/9</p> <p>reunion [1] 172/6</p> <p>reunions [1] 172/17</p> <p>reveal [1] 85/8</p> <p>reverse [1] 267/10</p> <p>review [4] 77/2 108/12 175/2 246/5</p> <p>reviewed [1] 200/1</p> <p>reviews [1] 203/11</p> <p>Richmond [2] 1/17 1/20</p> <p>ridding [1] 245/18</p> <p>ride [3] 178/10 178/23 180/23</p> <p>right [285]</p> <p>right-hand [3] 16/7 76/1 189/23</p> <p>rightly [1] 196/25</p> <p>ripped [1] 6/22</p> <p>rippling [1] 37/12</p> <p>rise [6] 22/22 58/23 99/10 158/14 224/4 240/10</p> <p>risk [2] 67/18 109/22</p> <p>risks [1] 53/13</p> <p>risky [1] 154/3</p> <p>Riverway [3] 1/16 1/19 2/10</p> <p>road [2] 62/6 63/8</p> <p>Robbie [2] 109/8 111/9</p> <p>Rodriguez [4] 159/24 161/18 162/4 177/23</p> <p>Rohypnol [8] 27/9 180/5 182/18 185/16 188/21 198/13 272/12 272/20</p> <p>role [2] 123/22 123/22</p> <p>Ron [2] 1/18 264/6</p> <p>roofie [1] 217/18</p> <p>room [53] 11/11 17/21 28/3 28/21 28/23 30/21 30/24 30/25 31/18 34/20 41/14 44/20 64/11 85/9 85/20 126/24 146/23 179/12 182/13 182/15 182/21 183/15 183/25 184/1 187/13 187/24 188/6 188/20 191/11 191/23 193/7 193/13 193/15 194/18 195/11 195/25 196/17 205/13 205/13 208/3 208/10 211/6 211/9 211/12 211/13 211/22 212/23 221/22 225/1 225/2 225/5 226/24 279/19</p> <p>roommate [4] 28/21 213/7 220/10 220/12</p> <p>roommates [5] 207/23 208/20 220/6 220/7 221/20</p> <p>ROOT [3] 1/6 1/7 190/8</p> <p>Ross [2] 65/17 65/23</p> <p>rough [1] 110/9</p> <p>round [1] 115/19</p> <p>rounding [1] 263/2</p> <p>route [1] 188/18</p> <p>Royal [7] 136/16 139/10 139/19 139/21 139/24 140/6 140/12</p> <p>rude [2] 42/8 106/11</p> <p>ruffies [8] 17/18 27/11 64/9 64/10 191/12 193/16 216/18 217/19</p> <p>rule [12] 49/24 60/1 74/16 118/8 120/4 239/20 239/22 244/18 257/4 257/8 280/12 282/17</p> | <p>rules [5] 276/8 276/20 277/9 279/21 279/23</p> <p>rules [5] 57/18 69/25 161/1 253/21 253/25</p> <p>ruling [14] 8/11 8/21 67/1 74/23 99/18 104/11 243/8 244/25 245/8 277/24 279/12 279/16 279/18 282/25</p> <p>rulings [5] 68/6 68/22 69/13 75/2 246/17</p> <p>Rumba [30] 10/7 10/25 11/11 174/4 174/15 175/4 175/5 175/7 175/9 175/12 175/14 175/23 175/24 181/21 181/24 182/7 183/19 187/22 195/10 195/18 196/1 196/9 200/12 200/14 267/17 268/6 269/2 269/4 269/14 270/7</p> <p>Rumba's [3] 10/10 183/7 185/24</p> <p>run [5] 52/17 79/8 108/13 248/2 263/13</p> <p>Runions [1] 2/4</p> <p>running [1] 79/9</p> <p>ruptured [3] 36/10 36/22 36/23</p> <p>Rusk [1] 2/14</p> <p>Ryan [11] 209/2 213/22 213/25 214/8 214/8 214/13 214/17 215/21 218/3 220/25 222/4</p> | <p>same [31] 7/10 11/20 15/23 17/21 33/22 41/21 44/2 44/5 49/11 73/4 89/19 92/24 115/23 146/21 147/14 157/14 157/15 168/21 171/4 215/19 221/7 221/12 247/13 259/16 261/16 262/7 263/8 267/11 271/21 277/11 282/23</p> <p>San [5] 73/22 73/24 76/14 95/22 97/2</p> <p>San Diego [1] 97/2</p> <p>Sara [12] 205/24 207/13 208/19 233/18 234/21 235/7 235/19 238/16 263/5 263/6 263/7 263/9</p> <p>sat [4] 148/23 150/15 229/15 268/17</p> <p>satisfactory [1] 4/2</p> <p>saved [2] 17/18 216/18</p> <p>saving [5] 27/11 64/9 182/18 185/17 217/18</p> <p>saw [32] 28/23 29/25 32/25 33/1 34/13 35/15 35/21 43/22 60/12 62/22 79/8 81/15 82/11 115/25 115/25 116/9 145/12 148/15 151/8 172/22 172/24 173/2 173/7 173/16 174/1 174/17 175/17 198/10 208/2 208/19 208/19 239/14</p> <p>say [78] 7/5 7/11 7/15 11/1 12/1 13/17 19/13 20/7 20/25 24/11 24/13 30/4 33/7 37/24 47/10 48/5 48/15 55/21 60/6 60/21 60/23 61/4 61/5 61/6 64/18 66/7 66/18 70/11 73/16 77/3 83/17 87/4 87/23 92/1 92/24 97/15 109/21 114/8 134/4 135/5 140/14 140/17 141/5 141/9 146/14 153/19 154/5 160/24 161/13 162/19 170/15 171/16 181/21 182/5 184/14 188/16 192/11 193/9 197/7 200/7 206/3 219/20 221/23 232/4 232/15 237/13 247/3 249/13 249/18 249/24 250/15 250/18 253/5 254/6 256/6 256/21 256/22 260/17</p> <p>saying [37] 7/17 19/10 21/21 22/2 68/25 72/7 81/24 88/3 89/25 114/5 116/4 132/14 150/5 162/9 162/10 164/9 182/3 183/14 183/16 187/15 187/17 197/2 212/25 216/17 222/25 237/12 243/20 243/21 250/2 256/9 261/3 261/18 261/25 267/11 268/23 270/3 281/23</p> <p>says [72] 8/2 10/18 10/22 11/6 13/19 15/5 16/1 16/7 18/16 21/6 27/16 27/17 28/18 35/18 58/8 82/20 89/19 108/8 108/9 122/5 136/9 144/10 150/25 162/18 164/7 167/5 175/14 182/11 184/24 185/10 185/14 186/8 188/23 191/25 192/2 192/9 192/21 193/7 193/11 193/14 194/11 199/3 207/7 211/7 212/1 212/3 219/5 220/13 224/14 224/24 225/11 227/10 231/14 232/1 244/5 244/13 249/22 253/1 253/11 259/7 261/5 262/1</p> |
| | <p>S</p> <p>SA [1] 237/20</p> <p>Sabrina [1] 34/3</p> <p>sacrifice [1] 56/10</p> <p>sad [1] 140/24</p> <p>safe [6] 41/10 55/12 60/16 109/23 140/23 258/1</p> <p>said [131] 11/2 13/18 17/18 18/19 18/25 19/16 21/1 21/3 21/10 22/11 27/9 27/11 28/8 29/1 29/3 30/6 30/8 31/5 32/12 32/15 34/22 35/21 35/24 36/4 36/10 36/12 37/3 38/8 38/20 39/6 39/8 40/6 40/7 43/14 44/10 57/13 62/1 62/4 62/24 63/16 63/17 64/8 65/17 65/23 66/12 66/15 70/2 77/23 79/16 84/3 86/3 87/10 87/25 87/25 90/2 92/1 94/10 94/10 94/13 95/21 101/12 109/24 110/18 111/6 112/9 117/25 117/25 118/10 118/22 128/9 129/4 134/4 136/14 136/15 141/17 145/1 145/5 145/14 146/10 151/9 160/18 164/8 166/7 166/10 175/10 175/19 177/3 177/25 182/5 182/21 187/18 192/12 192/23 193/8 195/20 197/7 197/10 198/10 211/9 214/7 218/19 219/3 221/19 221/23 223/10 223/18 225/4 229/14 229/14 232/12 234/5 234/6 236/7 237/13 238/2 240/5 246/7 252/8 258/11 260/16 260/18 261/13 269/2 269/14 271/18 272/11 273/11 280/3 282/2 282/3 282/3</p> <p>Sailor [5] 92/22 92/25 93/2 93/9 93/10</p> <p>sales [1] 247/4</p> | |

| | | | | | |
|--|--|--|--|--|--|
| S Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 323 of 335 | | 221/7 222/11 228/25 229/10 239/20 264/18 | | sensitive [2] 12/23 190/4 sent [32] 8/22 24/8 24/8 | |
| says... [10] 268/6 269/2 269/7 269/14 275/7 276/13 278/7 278/9 281/24 282/17 | | Section 5 [1] 51/21 Section 9 [1] 222/11 | | 24/19 25/14 30/10 33/22 35/3 101/4 129/5 133/7 136/18 | |
| scalp [1] 13/8 scar [1] 151/9 | | security [10] 18/23 24/3 32/8 55/14 174/6 174/10 174/19 251/16 273/21 274/1 | | 154/22 155/13 155/21 155/22 155/25 156/1 156/3 156/6 157/25 158/1 165/8 166/5 167/6 168/13 169/13 169/16 169/18 169/22 231/13 249/23 | |
| Scarano [3] 223/4 223/6 223/6 Scarano's [1] 272/19 | | see [145] 10/22 11/7 11/15 12/16 15/4 16/2 16/8 19/23 24/7 24/16 28/10 29/24 30/17 31/21 33/25 34/2 34/12 37/23 38/5 39/13 43/18 48/8 48/12 50/3 50/5 60/25 60/25 63/25 72/5 72/10 73/14 76/2 80/6 82/5 82/13 82/23 82/25 83/7 84/5 89/14 90/24 92/4 92/17 96/15 96/16 97/7 97/9 97/23 97/25 98/2 99/24 107/16 108/18 109/15 110/10 112/5 112/8 115/22 115/22 115/23 117/22 120/7 120/10 120/21 121/10 121/13 122/14 126/4 127/2 127/14 133/7 133/10 135/15 135/22 135/23 136/4 136/8 136/18 138/22 143/20 144/16 144/17 146/1 146/16 147/24 151/10 153/15 153/20 155/8 165/17 166/10 167/12 168/7 168/11 170/1 170/3 171/14 176/2 176/22 185/12 186/24 189/20 189/22 189/25 210/18 211/5 211/10 211/24 212/24 213/18 215/9 215/11 216/20 217/21 217/24 222/14 224/16 224/20 225/15 226/6 228/8 229/10 229/24 230/4 230/6 231/13 231/17 231/24 231/25 232/2 233/6 234/11 236/5 236/9 237/23 246/8 257/1 258/19 261/2 262/2 266/13 266/20 267/2 282/5 282/6 | | sentence [30] 105/10 105/17 105/19 105/21 112/6 112/8 112/8 146/8 167/6 177/24 183/24 183/24 184/3 184/3 184/6 191/3 207/8 207/8 207/9 210/15 210/24 214/7 217/21 224/20 224/24 225/11 225/15 225/18 237/19 237/21 | |
| scared [4] 21/11 22/10 32/10 41/6 | | | | sentences [2] 210/24 221/17 | |
| scenario [1] 196/5 | | | | separate [2] 118/3 118/4 | |
| scene [4] 80/10 162/19 268/20 269/21 | | | | separated [1] 98/20 | |
| schematics [1] 36/7 | | | | September [20] 119/12 119/20 120/1 120/6 120/7 120/15 122/1 122/16 122/22 122/25 124/1 125/24 126/4 126/9 128/2 130/22 132/13 165/2 165/20 165/24 | |
| Schmidt [12] 209/3 221/21 221/23 222/5 255/7 255/8 256/17 263/5 263/10 264/14 265/18 265/20 | | | | September/October [1] 165/24 | |
| Schmidt's [2] 258/18 264/25 | | | | sequence [4] 195/7 195/9 205/11 251/13 | |
| school [7] 44/24 55/5 55/6 55/7 55/7 55/10 55/12 | | | | sequential [1] 215/15 | |
| school-age [1] 55/6 | | | | sequentially [1] 215/2 | |
| Schooley [5] 80/4 80/8 80/11 89/25 90/2 | | | | serve [1] 6/9 | |
| schools [1] 113/9 | | | | served [1] 101/8 | |
| Schulz [23] 10/5 11/16 15/19 16/1 16/4 16/11 16/16 18/21 20/14 34/21 174/17 175/10 175/13 175/16 175/22 185/10 187/23 193/6 194/18 196/1 196/9 196/16 197/2 | | | | service [1] 82/24 | |
| Schulz' [6] 18/18 66/15 185/22 193/17 198/5 199/12 | | | | SERVICES [1] 1/7 | |
| scissoring [1] 115/7 | | | | serving [2] 50/18 51/5 | |
| Scott [3] 43/21 43/22 143/23 | | | | set [6] 14/21 71/9 125/13 130/15 242/16 243/21 | |
| Scout [1] 110/23 | | | | seven [1] 208/23 | |
| scraping [2] 12/3 13/6 | | | | several [26] 6/3 6/3 32/3 34/10 34/13 64/7 93/12 107/19 113/8 113/21 130/21 161/3 190/21 192/14 193/24 207/23 213/9 214/9 216/21 230/1 252/19 254/23 258/4 275/8 275/12 275/23 | |
| scratch [1] 28/4 | | | | severe [9] 12/13 12/17 12/17 12/22 12/25 13/2 13/2 144/13 148/16 | |
| scratched [1] 10/23 | | | | severity [1] 119/23 | |
| screaming [3] 79/10 79/17 79/18 | | see-through [1] 262/2 | | sex [23] 28/8 28/9 57/25 123/6 123/13 124/12 124/13 156/17 171/16 171/20 180/2 181/3 181/5 182/21 185/20 233/25 264/22 278/2 278/8 278/25 280/7 280/25 281/4 | |
| screen [22] 10/16 14/4 82/18 82/20 91/22 100/18 126/17 126/18 133/5 144/22 144/25 145/13 147/4 147/25 150/18 154/16 155/5 181/19 185/3 188/13 189/17 201/23 | | seed [2] 115/15 117/24 | | sexual [40] 53/24 54/2 57/9 57/18 105/12 105/12 105/21 105/22 113/23 124/23 125/1 125/4 125/6 125/25 127/16 127/20 127/21 128/4 145/4 160/3 161/19 165/2 165/6 165/8 165/23 166/2 166/2 167/10 167/19 266/12 278/4 278/22 279/11 280/12 280/14 280/15 280/15 281/10 281/24 282/1 | |
| screened [1] 148/20 | | seeing [10] 13/17 84/8 95/23 109/11 115/13 151/6 155/14 221/23 228/17 273/19 | | | |
| scroll [2] 15/12 231/24 | | seek [3] 34/17 227/17 227/22 | | | |
| seasons [1] 261/20 | | seeks [2] 101/17 111/3 | | | |
| seat [2] 19/6 222/24 | | seem [5] 70/6 125/12 190/16 226/14 260/20 | | | |
| seated [10] 4/4 9/21 22/25 63/13 99/12 106/2 158/17 164/16 224/6 240/12 | | seemed [2] 22/16 27/10 | | | |
| seats [1] 75/9 | | seems [7] 6/18 7/4 166/11 234/8 240/2 245/14 257/17 | | | |
| second [26] 27/23 38/6 41/17 69/15 105/19 112/2 112/2 125/13 125/16 126/15 159/12 166/16 180/19 181/1 184/25 190/18 192/7 192/7 201/12 201/25 217/11 222/23 225/9 230/24 237/19 277/12 | | seen [19] 23/25 85/9 88/6 103/24 109/7 115/3 117/7 144/14 157/23 173/13 173/16 192/2 192/3 192/20 197/9 202/19 202/20 214/25 252/19 | | | |
| secondary [5] 120/22 144/15 144/22 144/23 144/25 | | sees [3] 56/25 116/14 266/22 | | | |
| Secondly [1] 101/7 | | seizure [4] 120/4 144/15 144/18 144/19 | | | |
| secrecy [5] 46/8 46/11 46/14 48/6 49/25 | | semen [1] 16/24 | | | |
| secret [10] 47/3 47/18 47/19 48/3 49/2 52/11 147/2 153/18 153/25 206/19 | | Senate [2] 49/21 52/19 | | | |
| section [9] 48/13 51/10 51/21 | | send [4] 133/21 158/4 169/7 249/17 | | | |
| | | sending [4] 54/11 155/9 231/19 243/24 | | | |
| | | sends [1] 153/12 | | | |
| | | sense [9] 87/20 88/2 161/22 177/12 177/15 177/17 212/14 223/18 226/12 | | | |
| | | | | sexy [1] 43/3 | |

| S Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 324 of 335 | | sight [1] 38/11 sign [2] 53/12 139/5 | sneak [1] 243/18 snippet [1] 258/19 |
|---|-------------------------------|---|--|
| shaking [2] 15/21 117/12 | signal [1] 153/12 | so [244] 4/22 10/10 11/2 | 11/15 11/22 13/12 13/16 15/4 |
| shall [2] 51/17 264/13 | signed [2] 48/2 112/19 | 17/10 20/1 21/15 25/4 25/8 | 28/9 28/16 29/9 29/21 31/2 |
| share [2] 139/5 140/22 | significant [4] 131/13 132/15 | 31/19 31/21 34/8 36/6 37/1 | 37/25 38/2 38/19 39/17 39/21 |
| shared [3] 137/12 209/15 | 228/6 246/21 | 40/1 40/4 40/24 42/3 42/3 | 42/4 42/6 42/7 42/9 42/9 |
| 209/17 | signing [1] 53/19 | 42/12 43/9 45/4 45/10 46/11 | 49/2 50/1 50/13 52/17 52/21 |
| sharing [3] 75/13 209/20 | signs [2] 89/7 89/16 | 54/18 55/15 56/11 59/24 62/3 | 64/11 66/2 66/5 66/20 66/21 |
| 209/25 | silence [1] 103/17 | 66/25 67/12 69/24 69/25 | 70/21 70/22 73/4 78/18 78/23 |
| Sharon [1] 2/9 | silent [1] 104/23 | 79/23 80/9 81/13 82/13 86/24 | 87/3 87/17 87/17 87/20 88/11 |
| she [396] | silly [1] 83/15 | 94/12 95/12 98/12 98/25 | 100/18 101/5 103/2 103/4 |
| she'll [1] 145/23 | Simco [22] 205/24 205/25 | 103/22 104/12 106/11 109/19 | 110/8 110/19 110/23 113/5 |
| she's [33] 13/17 25/4 46/16 | 206/7 206/18 207/13 208/19 | 114/8 114/9 115/18 117/7 | 117/23 120/9 120/19 122/10 |
| 46/19 46/20 47/9 60/6 60/12 | 210/20 211/5 233/18 234/21 | 122/12 123/21 124/10 124/22 | 125/8 127/14 127/15 128/13 |
| 61/21 62/20 63/1 96/12 96/12 | 235/13 235/20 238/12 238/17 | 130/15 131/6 132/7 133/7 | 133/21 137/3 138/19 138/22 |
| 131/3 166/17 166/18 183/15 | 239/5 239/8 255/6 260/5 | 139/16 140/17 141/16 141/17 | 141/18 141/19 144/10 145/9 |
| 184/14 198/25 235/16 246/4 | 260/13 263/5 263/6 263/9 | 145/13 145/15 147/22 148/9 | 150/18 151/23 154/18 155/8 |
| 248/10 249/13 258/11 259/18 | Simco's [8] 210/16 211/3 | 155/10 155/15 155/21 156/3 | 159/5 160/18 162/15 163/6 |
| 261/3 261/25 264/7 267/16 | 211/12 234/24 235/7 259/5 | 163/17 164/21 165/11 165/25 | 166/9 170/2 170/25 171/2 |
| 271/19 273/24 278/21 281/23 | 259/14 261/2 | 172/9 172/11 173/6 174/22 | 175/18 175/19 176/12 177/18 |
| sheet [1] 254/5 | similar [4] 160/1 276/10 | 178/2 186/22 187/19 194/21 | 196/1 196/4 197/25 199/15 |
| shift [2] 120/19 132/19 | 278/20 282/16 | 202/1 202/1 204/16 206/4 | 206/6 208/18 209/7 210/11 |
| shirt [5] 6/22 20/12 30/19 | similarity [1] 282/12 | 212/5 212/7 214/16 214/25 | 216/3 217/4 217/10 218/23 |
| 179/9 179/10 | simple [1] 266/9 | 219/19 221/9 223/19 225/5 | 226/22 226/23 227/4 228/17 |
| shit [1] 236/12 | Simplex [1] 142/17 | 230/7 231/14 231/20 232/5 | 235/17 237/3 238/5 239/14 |
| shocked [2] 28/10 149/5 | simply [12] 83/25 116/22 | 240/24 241/17 242/6 242/10 | 243/10 243/14 243/16 244/17 |
| Shoot [2] 40/23 62/5 | 124/15 149/25 163/22 177/19 | 244/23 245/5 245/8 245/9 | 245/22 246/1 246/5 250/9 |
| short [3] 204/2 219/22 222/18 | 187/22 219/2 226/13 260/24 | 250/21 250/24 251/18 252/23 | 253/1 253/19 254/2 259/16 |
| shortchanged [1] 145/14 | 279/12 279/21 | 260/8 260/10 262/3 262/5 | 262/22 263/4 265/5 266/17 |
| shorten [1] 112/5 | since [11] 4/9 54/21 87/14 | 266/19 267/20 267/25 269/5 | 269/19 269/20 270/24 271/19 |
| shortly [6] 69/22 69/22 73/19 | 131/4 157/23 181/3 235/6 | 274/5 274/7 275/20 276/10 | 277/14 280/19 282/1 |
| 81/3 134/14 221/23 | 235/6 235/6 277/24 279/17 | social [9] 109/7 187/7 187/10 | 194/20 195/25 196/11 196/19 |
| shot [4] 61/24 140/23 208/15 | single [2] 154/8 280/7 | 235/19 236/3 | 235/19 236/3 |
| 208/15 | sink [1] 20/6 | socialized [1] 178/6 | softly [1] 106/11 |
| should [16] 9/6 9/6 14/20 | sipped [2] 205/6 210/8 | sole [1] 271/25 | some [101] 4/11 10/7 16/23 |
| 68/14 93/2 105/20 117/9 | sipping [3] 210/4 210/7 | 19/15 20/13 20/22 21/4 21/4 | 21/5 23/25 25/21 25/21 27/16 |
| 160/21 163/4 179/2 191/11 | 217/22 | 30/23 31/6 32/11 35/23 36/15 | 37/12 37/21 40/4 40/6 42/24 |
| 201/22 239/10 268/2 271/18 | sips [7] 186/20 186/21 214/21 | 42/24 45/2 45/3 52/15 53/1 | |
| 272/14 | 214/22 218/21 218/23 221/1 | | |
| shouldn't [1] 236/12 | sir [9] 14/14 50/12 59/3 | | |
| show [28] 10/16 34/23 42/25 | 103/3 108/3 119/18 184/20 | | |
| 43/11 56/13 62/3 62/9 65/1 | 259/19 265/7 | | |
| 97/2 104/13 133/14 156/17 | sit [3] 75/9 86/22 233/12 | | |
| 163/23 165/16 166/19 166/24 | sitting [18] 19/5 19/7 23/18 | | |
| 167/12 168/20 169/24 176/22 | 41/14 78/2 84/12 84/14 84/16 | | |
| 176/23 228/10 229/9 232/19 | 86/14 101/10 146/12 146/14 | | |
| 257/21 275/21 280/20 281/18 | 151/25 209/14 209/14 209/19 | | |
| showed [4] 14/15 209/4 219/3 | 216/12 263/18 | | |
| 261/19 | situation [8] 12/21 13/2 41/3 | | |
| shower [5] 20/6 20/7 20/7 | 113/9 122/15 123/15 124/6 | | |
| 38/5 42/2 | 250/5 | | |
| showing [3] 223/8 260/14 | situations [1] 258/1 | | |
| 282/14 | six [6] 23/25 54/25 62/24 | | |
| shown [4] 56/9 100/3 160/16 | 108/16 208/23 252/10 | | |
| 166/18 | size [1] 261/21 | | |
| shows [5] 89/11 94/7 169/1 | skip [3] 157/12 224/14 240/4 | | |
| 169/1 269/5 | skipped [1] 251/24 | | |
| sic [3] 140/10 183/9 193/18 | slams [1] 21/18 | | |
| sick [6] 110/19 128/23 131/6 | slander [2] 58/11 58/12 | | |
| 151/17 227/16 227/21 | slandered [1] 58/8 | | |
| sicken [1] 111/3 | slang [1] 194/5 | | |
| side [21] 5/18 19/6 19/7 | sleep [3] 31/19 31/20 31/22 | | |
| 27/15 31/17 62/2 62/4 63/8 | sleeves [1] 19/24 | | |
| 77/24 79/8 79/10 86/3 86/10 | slightly [2] 112/15 262/2 | | |
| 122/8 122/9 140/13 147/22 | slow [3] 34/19 236/11 250/16 | | |
| 258/9 271/10 273/1 273/1 | small [6] 20/5 55/11 131/19 | | |
| side's [1] 276/11 | 150/11 208/16 258/19 | | |
| sidebar [2] 46/5 67/2 | smaller [1] 33/8 | | |
| sided [1] 117/14 | smart [1] 184/14 | | |
| sides [4] 9/19 75/10 258/21 | smile [3] 141/3 157/17 157/18 | | |
| 279/15 | Smith [1] 247/3 | | |
| sideways [1] 157/3 | SNAFU [1] 223/17 | | |

| S Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 325 of 335 | | |
|---|---|---|
| some... [73] 67/23 72/10 75/12 76/2 78/4 79/13 81/16 91/9 96/19 98/19 99/24 100/4 104/21 108/13 110/11 110/12 110/17 110/24 111/1 115/14 116/1 119/2 123/21 124/12 125/1 127/16 128/14 135/8 136/5 145/4 145/20 148/3 152/17 153/8 156/1 163/4 164/21 170/10 174/6 174/10 178/6 182/12 182/16 184/4 187/19 192/9 192/25 193/1 199/4 200/1 200/1 205/22 206/18 210/4 210/8 217/7 224/11 238/8 238/14 239/6 241/24 242/22 242/23 242/23 242/23 243/6 243/18 245/11 254/20 272/24 274/11 276/2 282/6 somebody [11] 25/10 45/17 47/6 47/12 68/16 164/5 208/24 256/3 275/3 281/1 281/5 someone [15] 30/17 34/8 57/25 58/13 60/24 73/5 86/21 88/2 98/13 111/21 142/10 162/10 191/19 191/20 200/3 something [62] 4/17 9/17 22/2 25/10 25/10 28/19 28/20 33/8 40/11 40/19 45/19 52/8 53/2 56/6 63/16 72/25 82/14 87/4 87/10 88/14 88/15 97/22 98/4 98/8 99/4 118/22 120/22 132/4 132/25 133/20 133/22 138/24 139/2 145/14 147/5 148/8 169/9 170/6 176/13 185/17 197/10 197/20 200/3 200/4 210/3 214/5 215/5 220/8 230/8 238/5 239/8 240/13 252/11 252/11 252/12 253/5 261/25 262/1 269/14 269/25 275/2 280/8 sometime [10] 122/15 122/16 122/19 124/16 125/7 125/24 165/19 167/15 172/11 225/20 sometimes [6] 69/17 70/8 110/19 128/1 161/3 216/6 somewhat [3] 149/5 226/19 281/4 somewhere [9] 19/17 68/16 81/22 81/23 90/18 113/12 132/13 134/1 165/23 soon [3] 213/24 222/15 223/20 sore [3] 17/10 20/17 182/20 Soriano [4] 218/13 218/22 219/3 219/21 sorry [52] 20/24 21/6 39/23 48/9 49/5 59/6 59/7 63/10 63/23 83/14 88/21 91/10 112/2 112/3 121/1 126/15 127/7 134/7 144/12 161/18 166/15 168/1 173/5 174/1 177/8 179/6 181/16 185/25 191/14 197/18 200/15 203/17 213/14 220/11 222/2 225/24 227/4 232/5 239/13 242/20 250/17 253/17 254/18 255/1 257/6 260/12 266/25 267/9 270/4 271/11 271/24 278/12 sort [10] 4/9 8/18 45/3 67/23 | 67/23 98/19 127/16 175/2 261/17 264/16 sorts [1] 6/18 Sotto [1] 135/17 sounds [3] 249/21 261/15 281/4 sources [1] 160/16 south [7] 5/13 5/25 6/2 6/24 7/1 7/2 79/8 SOUTHERN [2] 1/1 159/25 space [2] 75/8 75/12 speak [10] 41/8 60/7 60/10 106/11 123/18 203/24 246/10 268/18 270/2 271/22 speaking [12] 22/1 22/2 59/24 72/13 80/12 89/9 106/10 143/4 210/13 268/17 270/2 272/4 special [4] 35/10 104/4 104/7 198/9 specific [5] 93/16 94/25 121/21 125/3 199/16 specifically [13] 34/21 48/1 76/17 172/15 203/17 206/3 216/17 249/5 249/8 260/16 260/17 262/1 272/19 specified [1] 270/11 speculate [1] 196/13 speculation [4] 184/13 200/6 264/15 265/8 speech [2] 101/16 248/18 spend [8] 23/12 70/13 70/14 70/15 100/6 141/23 226/15 247/25 spending [1] 57/25 spent [2] 70/10 226/24 spinal [1] 108/6 split [1] 244/20 spoke [5] 80/4 89/2 93/17 113/3 173/22 spoken [7] 12/10 26/9 41/12 58/16 63/20 63/25 86/13 Spring [1] 23/20 St [1] 241/4 stacked [1] 52/12 staff [7] 50/17 51/4 78/11 79/1 79/7 80/8 85/9 stage [1] 242/15 stagger [1] 116/10 staggered [1] 116/16 stamp [3] 15/22 15/23 76/2 Stamp 000035 [1] 15/23 Stan [1] 57/15 stand [13] 9/23 11/17 48/5 55/21 60/11 69/19 105/25 164/10 242/16 247/6 256/3 261/11 280/1 standard [3] 51/16 248/25 282/17 standards [3] 50/22 50/24 51/10 standing [6] 11/11 11/23 110/7 204/3 247/3 254/9 standpoint [1] 109/24 stands [1] 144/11 start [15] 11/15 23/11 23/15 38/1 42/14 77/4 87/20 87/22 115/15 135/9 147/12 178/19 242/6 242/13 265/24 started [22] 11/1 12/2 12/3 21/21 32/21 32/24 55/5 86/2 86/9 87/9 88/13 93/12 123/25 | 124/1 124/1 124/13 124/16 126/11 132/12 165/2 182/5 242/4 starting [4] 144/3 173/6 237/20 271/2 starts [6] 13/6 42/7 180/16 239/24 269/25 273/16 state [59] 24/15 29/25 30/22 31/17 31/21 32/9 33/13 33/17 86/6 92/12 99/14 102/12 104/6 109/2 158/20 159/1 159/3 159/9 159/22 169/8 177/1 189/1 189/20 190/9 191/4 191/16 191/20 193/5 193/21 193/24 196/7 196/10 196/14 196/18 196/25 198/2 198/6 199/10 199/13 199/19 200/17 200/22 200/23 201/3 202/9 203/15 210/3 236/2 237/10 248/21 250/13 250/22 250/23 251/16 251/16 252/12 252/13 252/21 253/3 stated [25] 84/16 89/25 92/20 92/21 92/23 92/25 93/3 93/8 93/11 93/17 158/23 185/16 185/17 191/13 191/15 194/8 211/8 213/8 227/16 234/11 238/4 238/13 239/5 239/7 261/11 statement [101] 14/16 21/1 21/2 21/2 21/2 24/24 24/25 25/5 25/7 25/9 25/9 25/16 25/20 26/8 26/9 26/22 29/13 29/15 29/22 32/17 71/25 72/1 72/17 72/20 72/24 72/25 73/5 73/12 77/22 78/3 78/6 81/18 94/12 95/2 114/16 141/12 159/15 159/15 162/17 163/2 163/20 164/4 175/2 175/3 177/10 177/16 177/17 178/1 179/5 180/5 181/4 181/21 182/7 184/23 186/24 187/2 190/20 192/10 195/9 195/12 195/14 195/16 195/17 195/18 195/22 196/9 196/17 197/4 197/25 198/15 200/8 200/10 200/11 200/12 200/17 200/19 200/22 200/23 210/22 214/25 215/8 218/1 218/4 218/14 225/8 226/6 227/10 236/6 238/9 238/10 250/9 252/18 252/20 253/4 253/18 273/19 273/19 273/20 273/22 274/1 277/16 statements [41] 29/8 32/11 32/14 32/23 35/23 70/6 72/9 72/14 89/16 93/17 93/19 93/20 94/8 95/17 95/20 158/22 160/20 161/2 161/17 161/21 161/21 162/7 162/13 162/14 162/22 163/4 163/6 163/7 163/12 163/15 164/11 174/25 179/6 187/15 189/6 198/12 202/10 242/21 253/9 273/18 273/23 states [25] 1/1 1/11 53/16 77/22 78/10 78/11 84/11 85/19 113/21 115/3 136/15 144/21 182/13 182/15 182/17 182/19 183/14 183/25 184/4 184/7 195/10 217/22 236/7 238/25 266/6 |

| S Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 326 of 335 | | |
|--|---|--|
| stating [6] 165/9 166/5 167/7 179/1 199/20 253/9 | student [1] 87/14 | 225/11 226/13 227/12 229/13 233/4 234/5 234/19 239/15 244/16 270/23 274/17 |
| stationed [2] 73/22 73/24 | stuff [7] 70/11 88/3 115/18 166/8 172/18 243/18 243/24 | surely [1] 60/18 |
| statute [1] 5/25 | stupid [1] 43/19 | surgeon [1] 34/4 |
| stay [13] 32/12 40/5 104/22 108/17 109/18 110/19 110/21 115/4 120/20 131/8 246/12 270/4 270/4 | subject [18] 51/18 52/9 74/25 100/22 107/8 130/2 134/15 134/18 142/3 143/8 152/8 155/9 156/19 160/25 176/11 189/3 219/23 241/11 | surgeries [1] 131/4 |
| stay-at-home [1] 110/21 | subjects [1] 118/21 | surgery [18] 13/22 13/22 34/4 34/10 34/15 34/17 37/3 37/10 37/15 37/18 38/7 42/17 44/2 131/25 132/23 240/18 271/4 271/7 |
| stayed [3] 31/18 211/3 219/22 | submit [1] 282/19 | Surgical [2] 227/18 227/23 |
| STD [22] 143/2 144/22 144/25 145/1 145/3 145/9 145/13 146/6 146/10 146/20 147/4 147/25 148/16 148/19 149/6 149/19 149/23 150/5 150/17 150/18 151/9 151/10 | submitted [1] 198/16 | surprise [4] 104/20 254/2 254/3 254/8 |
| STDs [7] 16/8 16/8 16/11 16/13 56/9 142/9 142/12 | subordinate [3] 50/16 51/3 139/11 | surprised [1] 223/19 |
| stenography [1] 1/24 | subordinates [1] 57/18 | surprising [1] 212/21 |
| step [2] 99/12 158/18 | subpoena [3] 51/15 101/8 101/17 | surrounded [1] 275/11 |
| Stephanie [4] 1/21 1/21 2/4 267/19 | subpoenaed [2] 248/13 248/14 | surrounding [1] 19/22 |
| Steven [1] 19/7 | subpoenas [2] 50/1 51/2 | Susan [3] 2/3 111/8 111/8 |
| stick [2] 132/19 226/16 | subsequently [2] 86/6 117/13 | suspect [1] 78/12 |
| stiffness [1] 107/20 | substance [3] 176/9 176/17 197/4 | SUV [1] 19/5 |
| still [41] 23/21 28/6 38/1 40/4 44/10 44/11 44/20 69/7 80/5 88/9 99/14 114/1 117/25 117/25 142/1 149/10 163/20 164/5 170/20 178/23 179/7 211/16 211/24 212/25 216/12 226/22 228/17 228/18 231/20 235/3 239/13 240/9 249/15 249/25 250/3 250/7 252/24 253/3 261/11 270/17 271/11 | substantial [1] 282/9 | swab [1] 13/12 |
| stirrups [1] 13/10 | substantially [6] 280/9 280/16 280/20 280/22 282/8 282/18 | swabs [1] 13/8 |
| stomach [7] 28/4 86/2 86/9 86/17 86/19 87/6 95/9 | substantive [2] 246/20 246/25 | swear [1] 256/12 |
| stop [6] 41/3 48/18 56/11 56/12 68/11 208/1 | substantively [1] 195/17 | swelling [1] 84/24 |
| stopped [2] 167/10 167/16 | such [4] 6/7 42/13 81/18 196/3 | swig [1] 205/7 |
| stopping [1] 239/17 | sudden [2] 21/18 115/6 | swigged [1] 205/7 |
| story [25] 11/1 26/15 26/17 26/19 52/24 83/17 85/24 86/7 86/23 87/2 88/12 95/10 140/13 183/20 191/17 191/22 191/23 191/24 194/10 194/21 195/11 196/8 196/16 196/22 199/4 | suddenly [2] 84/17 86/14 | swimsuit [1] 38/4 |
| straight [4] 28/10 29/9 131/8 239/16 | sue [1] 7/6 | swinging [1] 75/12 |
| straightforward [1] 265/12 | suffer [1] 41/8 | switch [2] 49/7 267/17 |
| strains [1] 142/13 | suffered [1] 113/22 | SWORN [1] 10/1 |
| street [4] 1/22 2/6 2/14 60/22 | suffering [1] 34/7 | sympathy [1] 111/4 |
| strength [2] 117/15 117/18 | sufficiently [1] 282/9 | symptom [1] 118/10 |
| stress [11] 34/18 38/8 38/12 38/15 39/7 39/9 39/16 40/15 40/17 93/1 96/7 | suggest [2] 103/24 269/6 | symptoms [6] 109/19 115/14 116/11 117/11 117/21 117/21 |
| stressors [4] 108/23 109/5 109/25 112/10 | suggestion [3] 164/10 246/1 246/22 | syndrome [7] 39/20 106/18 106/21 108/8 110/13 110/13 113/5 |
| stretcher [1] 84/13 | suggestive [1] 110/12 | system [2] 45/6 226/21 |
| stricken [3] 118/18 272/15 275/7 | suggests [2] 69/17 116/11 | |
| strike [2] 90/3 274/6 | suitable [1] 99/8 | T |
| striking [2] 86/15 95/8 | suitcase [1] 33/16 | T-shirt [2] 30/19 179/9 |
| string [3] 135/10 135/21 231/4 | Suite [3] 1/16 1/19 2/11 | T.J. [1] 203/17 |
| strong [1] 84/19 | sum [1] 197/4 | T.J. Lunardi [1] 203/17 |
| stronger [1] 269/8 | summarize [1] 191/4 | tab [3] 75/19 129/15 224/14 |
| | summarizes [1] 158/25 | Tab 82 [1] 75/19 |
| | summary [2] 103/23 162/7 | table [7] 13/9 13/10 16/16 18/18 216/11 216/13 263/19 |
| | Sunday [11] 77/17 85/24 97/12 97/18 98/20 102/5 102/6 155/8 155/16 155/25 169/15 | tables [1] 187/11 |
| | super [1] 131/6 | Tackett [1] 272/21 |
| | supervisors [1] 57/18 | Taco [1] 114/5 |
| | supplemented [1] 242/4 | tactic [1] 55/3 |
| | supplements [1] 247/7 | take [48] 4/13 9/12 9/23 11/18 19/4 19/19 31/15 31/24 34/10 42/4 50/10 55/11 56/15 57/14 58/18 58/21 60/22 60/24 63/9 67/18 86/25 100/14 105/4 110/24 124/5 124/15 125/19 131/19 131/22 134/1 139/4 152/3 152/5 154/4 164/12 186/17 188/11 197/20 218/24 222/16 240/24 245/17 256/22 259/3 262/4 262/11 269/1 274/9 |
| | support [3] 92/23 140/7 149/8 | taken [22] 7/19 20/14 22/23 58/24 59/22 85/1 86/11 95/15 96/19 98/9 100/24 161/24 164/14 174/19 177/6 197/8 222/21 243/16 250/20 266/14 266/21 279/13 |
| | suppose [2] 156/14 208/8 | takes [7] 13/4 18/24 29/22 37/23 102/17 256/3 262/5 |
| | supposed [6] 13/1 42/20 94/5 220/11 252/22 252/25 | |
| | supposing [1] 139/23 | |
| | sure [49] 10/13 27/3 31/6 32/8 33/6 48/11 52/17 63/17 71/2 75/13 78/9 89/13 90/20 90/25 91/3 103/9 118/9 126/8 128/20 129/10 129/11 139/7 140/17 140/21 145/24 147/15 148/25 153/15 153/17 153/19 166/7 170/25 176/15 177/7 179/25 190/19 203/7 221/1 | |

| Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 327 of 335 | | |
|---|---|--|
| <p>T taking [16] 12/2 19/17 31/6 33/15 33/18 61/24 93/7 125/20 143/1 151/5 151/6 186/20 218/23 226/8 231/14 269/3</p> <p>talk [34] 4/3 4/9 16/11 19/13 19/14 21/3 24/19 32/1 32/5 45/18 47/14 101/3 104/16 112/16 115/20 123/14 134/10 134/12 138/16 138/17 139/4 141/21 142/2 147/17 152/4 194/13 228/14 230/7 241/23 254/12 258/21 260/14 262/10 267/3</p> <p>talked [26] 27/2 28/5 28/12 56/17 66/15 69/16 72/13 103/7 121/7 121/19 130/8 145/4 150/1 151/4 151/8 160/7 164/21 168/19 200/3 208/9 220/5 220/21 223/9 228/16 232/8 270/19</p> <p>talking [42] 25/24 31/5 31/24 41/23 42/25 63/16 75/1 84/15 92/9 114/21 122/4 122/5 134/6 134/13 137/20 142/1 163/17 176/19 177/3 180/11 180/13 184/10 184/19 184/22 187/18 201/5 209/14 211/11 215/5 231/5 255/23 256/4 256/18 256/19 257/3 257/3 257/19 258/7 258/23 268/1 273/24 281/1</p> <p>talks [6] 42/9 255/5 257/20 259/6 260/13 262/6</p> <p>tangential [3] 46/4 46/7 46/12</p> <p>tangles [1] 29/21</p> <p>tap [1] 108/6</p> <p>Tape [6] 63/22 65/15 65/21 66/3 66/10 66/23</p> <p>taste [1] 182/17</p> <p>taught [1] 55/6</p> <p>tax [1] 45/15</p> <p>teach [1] 55/9</p> <p>teaching [1] 55/6</p> <p>team [1] 110/22</p> <p>technical [1] 62/8</p> <p>technician [1] 23/13</p> <p>technologically [1] 126/23</p> <p>Ted [5] 31/8 31/10 31/12 55/21 253/22</p> <p>telephone [2] 60/15 228/7</p> <p>telephoned [1] 237/25</p> <p>telephonically [1] 101/14</p> <p>tell [98] 12/17 16/4 23/7 24/25 25/12 26/15 35/4 35/20 37/9 41/15 41/22 43/5 45/11 47/12 52/24 53/5 53/8 58/13 59/13 59/20 60/1 60/3 60/12 62/12 69/24 71/18 72/19 72/23 72/23 76/7 81/10 83/25 84/9 85/19 87/17 89/11 97/21 98/3 98/6 106/23 121/17 123/2 125/5 137/25 139/23 140/3 145/3 149/6 150/23 151/1 166/11 170/13 171/3 176/8 178/17 178/19 179/11 179/12 179/17 179/20 179/24 179/25 180/1 180/4 180/7 181/1 181/7 181/9 182/25</p> | <p>184/9 184/21 198/25 201/5 202/8 203/23 204/18 205/5 207/21 207/24 208/21 209/15 211/21 215/17 218/10 218/16 220/6 232/7 232/10 235/3 236/21 246/9 256/6 256/7 260/16 264/10 272/22 274/24 277/16</p> <p>telling [28] 10/25 47/6 47/13 52/15 58/14 62/15 72/3 73/11 87/14 87/24 94/25 97/22 98/5 98/8 98/25 107/21 116/3 122/24 140/1 148/6 148/16 163/15 168/14 182/2 210/9 226/25 227/1 235/19</p> <p>tells [8] 21/9 24/24 25/14 138/23 139/2 162/5 167/9 256/14</p> <p>temperature [1] 108/18</p> <p>Ten [1] 22/21</p> <p>tend [1] 264/22</p> <p>tender [1] 274/18</p> <p>terminable [1] 58/1</p> <p>terms [4] 28/13 94/25 104/1 115/4</p> <p>terrain [1] 204/10</p> <p>Terri [2] 43/21 43/22</p> <p>test [3] 149/24 257/16 280/20</p> <p>tested [6] 147/6 147/7 147/9 147/9 148/10 148/11</p> <p>testified [11] 6/21 8/25 39/1 62/21 127/3 166/4 166/18 187/1 268/8 272/19 275/19</p> <p>testifies [2] 268/12 268/14</p> <p>testify [27] 10/1 52/1 52/4 57/24 60/10 62/4 63/3 102/11 103/12 114/2 128/21 129/2 140/12 145/23 147/22 163/23 164/5 223/12 247/21 249/4 249/12 249/20 250/25 253/9 268/11 269/13 272/21</p> <p>testifying [5] 57/17 111/12 111/13 118/17 118/17</p> <p>testimony [60] 8/22 45/23 50/9 51/8 62/23 63/1 63/7 66/15 74/14 74/18 74/19 101/18 101/20 104/21 104/24 109/14 115/24 118/23 123/12 125/23 126/2 126/22 127/5 127/22 128/9 128/25 129/2 131/11 152/8 156/19 163/5 163/24 163/25 164/25 165/17 168/18 169/23 171/19 173/13 184/24 186/18 195/15 242/11 258/9 259/6 259/22 259/23 260/5 260/23 260/24 261/3 264/16 266/15 267/23 268/6 268/24 269/9 269/20 272/19 281/20</p> <p>testing [3] 108/10 117/18 118/13</p> <p>tests [2] 108/5 108/14</p> <p>TEXAS [13] 1/1 1/4 1/17 1/20 2/7 2/11 2/15 23/20 103/21 104/1 137/22 138/7 159/25</p> <p>text [3] 237/11 238/2 238/7</p> <p>than [52] 5/3 5/4 5/12 8/9 8/23 8/25 9/1 9/15 37/12 37/13 46/15 48/16 51/11 51/13 53/16 62/24 64/10 64/12 64/14 64/16 70/19 72/11 90/19 91/24 94/17</p> | <p>108/25 117/21 118/7 126/23 130/18 172/3 172/3 186/12 190/11 201/1 202/17 208/15 214/15 215/23 215/24 218/22 227/19 229/2 243/15 247/14 250/11 256/11 260/22 261/23 262/15 266/9 269/8</p> <p>thank [23] 4/14 9/21 9/25 22/20 23/2 51/23 65/13 70/3 70/25 74/9 98/14 99/13 100/23 217/3 229/7 232/6 241/13 241/20 259/4 262/22 265/17 270/23 282/25</p> <p>Thanks [2] 222/20 231/14</p> <p>Thanksgiving [1] 172/17</p> <p>that [1678]</p> <p>that's [173] 7/7 8/18 14/8 15/24 21/9 21/9 21/15 36/17 39/22 45/25 46/21 47/4 47/5 47/15 47/16 47/21 47/23 49/7 52/13 56/10 61/1 61/17 67/9 68/15 68/25 69/5 69/11 69/12 70/8 80/6 83/9 84/4 89/21 90/5 91/21 92/1 95/11 99/9 102/24 103/20 104/10 107/23 107/24 108/24 111/1 112/1 112/13 112/15 112/22 114/5 115/16 120/9 120/21 121/24 122/10 123/6 123/11 123/15 125/13 126/20 127/5 127/6 127/7 127/9 127/13 131/16 132/2 132/12 133/10 133/16 134/4 136/13 136/23 139/8 139/20 143/1 143/3 146/6 150/20 151/19 153/23 155/17 156/4 156/7 157/22 162/22 171/2 171/4 174/22 175/5 175/6 181/13 183/17 183/21 184/5 186/1 186/4 186/5 186/6 187/9 187/17 188/23 191/25 192/2 193/7 193/8 193/14 193/16 194/5 194/10 194/23 194/24 195/12 195/15 195/20 196/21 207/19 210/2 210/21 214/20 219/5 220/2 220/15 221/24 226/25 227/5 229/2 229/11 229/23 229/25 231/9 235/7 238/5 240/22 244/22 245/10 246/24 247/24 248/4 250/1 251/2 252/17 254/4 254/6 254/13 255/22 256/17 256/20 258/12 258/24 261/21 261/22 267/9 268/5 269/15 270/6 271/25 272/1 272/18 273/22 273/23 274/8 275/4 275/20 276/5 277/6 277/8 278/4 281/1 281/3 281/8 281/23 282/6</p> <p>their [33] 4/9 6/9 30/1 30/2 57/15 101/14 110/9 113/15 131/23 131/23 150/23 153/3 153/7 160/21 162/13 194/1 201/4 206/8 207/23 236/8 242/16 244/16 245/3 245/22 253/25 254/2 257/19 257/19 262/5 266/4 266/10 267/9 273/16</p> <p>theirs [1] 242/10</p> <p>them [73] 4/19 4/21 5/22 12/21 12/25 27/2 27/6 30/10 32/21 36/24 39/4 39/9 43/8 43/14 43/14 45/17 45/18 50/5</p> |

them... [55] 52/25 65/4 69/20
 70/7 70/10 71/20 84/9 89/5
 91/9 113/15 115/22 117/24
 150/23 151/1 154/16 154/17
 156/18 158/23 159/6 164/12
 175/24 187/13 187/25 188/20
 188/20 193/25 196/10 197/24
 199/20 209/9 211/8 216/4
 216/5 216/6 216/14 242/19
 243/6 245/7 245/14 246/11
 248/7 254/3 254/12 258/1
 258/12 262/11 262/13 262/15
 262/16 262/20 266/23 270/11
 270/12 273/7 274/12
 themselves [1] 8/24
 then [126] 9/12 11/4 18/21
 18/25 19/5 19/6 19/16 21/6
 21/19 21/21 23/11 26/25 27/1
 27/4 27/4 27/8 27/11 28/17
 28/18 34/17 37/25 42/9 42/10
 42/14 42/15 45/7 55/1 55/6
 55/7 55/12 56/12 61/6 72/1
 77/21 84/13 85/17 86/17
 86/25 99/24 107/18 108/4
 110/7 114/9 115/11 115/20
 116/7 116/15 121/22 122/12
 122/19 123/7 124/20 127/14
 127/19 127/25 129/5 130/10
 131/9 136/8 139/12 155/12
 156/3 156/7 157/12 158/8
 160/18 162/10 164/2 164/3
 164/12 166/1 167/6 173/7
 173/10 174/4 174/17 175/9
 180/13 182/5 190/25 194/18
 195/16 195/21 199/25 205/12
 205/20 207/8 209/2 210/3
 210/15 211/4 211/15 215/5
 216/14 217/21 219/22 220/5
 223/23 223/24 225/7 226/16
 227/15 227/25 230/4 231/24
 234/10 235/16 238/18 241/24
 242/23 245/4 246/17 251/20
 251/24 253/18 253/24 255/16
 255/22 256/14 257/14 261/22
 262/20 263/12 263/14 264/1
 269/17
 theory [1] 162/15
 therapist [14] 40/23 96/13
 96/21 97/11 97/21 98/4 98/7
 115/8 115/12 115/12 115/25
 116/1 116/4 118/3
 therapy [3] 34/18 40/18 115/4
 there [208] 4/7 8/17 10/11
 11/23 13/1 13/13 13/18 16/20
 16/22 16/22 16/22 18/23 20/9
 20/24 22/9 28/24 30/15 31/4
 32/7 32/13 32/19 34/12 35/18
 36/3 36/15 36/16 38/16 39/8
 42/2 43/24 48/6 48/12 48/13
 48/18 53/24 54/2 54/8 54/11
 55/14 56/1 60/4 62/21 62/22
 67/7 68/4 69/12 69/24 71/20
 72/8 74/22 75/8 75/9 75/11
 75/12 76/1 76/18 77/9 78/14
 80/21 81/4 81/4 82/4 84/18
 86/22 88/20 88/25 89/6 89/10
 89/16 96/19 96/22 96/23 98/1
 98/11 98/12 98/13 100/16
 100/16 101/3 101/14 104/17
 107/13 108/19 113/23 117/3

118/25 119/17 120/22 121/3
 121/17 121/19 125/23 126/9
 128/3 129/18 132/14 135/22
 136/10 136/11 137/5 140/5
 140/8 141/3 144/4 144/5
 145/5 145/12 146/2 146/13
 146/14 146/16 146/18 146/18
 147/2 147/5 149/8 149/18
 150/1 150/10 151/8 151/25
 153/2 156/16 156/16 157/19
 157/24 161/16 161/16 162/17
 162/17 164/22 165/22 169/25
 170/8 170/10 170/11 170/17
 171/9 171/23 171/25 173/3
 174/19 182/20 185/4 186/6
 187/8 187/9 188/23 191/12
 193/16 193/19 194/20 196/3
 198/4 199/11 200/25 201/11
 201/22 202/5 202/6 206/2
 206/13 208/1 208/22 208/23
 209/7 209/9 211/10 212/19
 221/17 222/6 224/21 225/13
 225/15 226/22 227/19 230/17
 231/6 234/13 237/14 237/21
 239/15 242/23 243/15 245/20
 246/10 246/19 248/16 251/4
 255/21 255/21 256/13 256/20
 256/23 257/20 261/7 261/10
 262/9 262/9 265/10 265/25
 266/11 266/12 270/17 276/6
 279/10 279/10 280/6
 there's [56] 5/1 5/19 16/7
 19/20 20/5 27/15 37/12 38/18
 41/14 42/24 46/7 57/6 59/4
 62/5 64/9 64/20 65/5 69/19
 69/23 73/6 74/11 75/5 96/18
 100/18 103/20 103/21 121/9
 121/17 156/7 162/5 170/11
 187/14 202/21 227/19 239/20
 241/24 246/23 247/5 247/11
 248/25 252/8 254/8 254/12
 254/22 255/10 257/22 260/22
 265/23 272/10 272/16 273/19
 275/16 278/12 279/8 280/5
 280/6
 thereabouts [1] 89/12
 therefore [13] 7/23 7/24 60/7
 98/20 160/17 160/18 163/6
 164/8 253/12 253/19 259/15
 265/3 272/7
 thereof [1] 266/21
 these [49] 6/5 6/14 9/14 13/4
 18/16 41/11 43/3 54/18 57/3
 65/1 71/19 71/21 81/20 90/7
 97/1 98/22 104/16 109/7
 115/21 115/23 130/8 130/11
 134/18 134/19 139/10 139/16
 140/13 140/15 142/22 148/5
 148/13 154/22 161/24 177/8
 186/25 210/25 216/22 225/21
 242/5 245/11 245/17 245/25
 246/15 256/20 258/11 258/20
 259/20 271/12 272/23
 they [180] 8/25 9/5 9/6 12/20
 12/22 12/23 12/23 19/11
 19/11 19/12 19/16 19/17
 19/19 19/21 19/22 19/24
 19/25 20/1 20/3 25/2 27/8
 29/3 29/3 30/4 30/4 30/6
 30/6 30/9 31/2 31/15 31/17
 33/6 36/4 36/23 36/25 37/1
 37/1 37/9 37/11 37/17 37/18

37/23 39/9 40/2 40/3 40/4
 40/5 40/9 40/11 40/12 40/13
 45/19 47/14 50/6 53/1 53/4
 53/8 54/18 54/19 55/14 55/22
 55/24 56/12 59/8 60/19 60/19
 60/21 64/4 66/13 70/11 79/1
 79/7 81/15 81/15 86/4 87/1
 88/4 92/25 95/15 101/6
 101/12 101/12 103/7 108/24
 110/6 110/15 110/16 113/7
 113/14 117/24 117/24 118/8
 118/12 140/8 144/5 151/1
 151/2 156/17 160/1 160/7
 163/9 178/24 182/18 185/17
 185/20 187/13 187/20 187/25
 188/3 188/4 188/5 188/7
 190/24 193/15 193/15 193/15
 193/21 196/13 197/7 197/8
 197/10 197/16 197/20 197/21
 197/22 197/22 197/23 198/10
 198/12 199/22 200/25 204/19
 211/11 211/11 212/8 212/13
 212/25 213/1 217/4 219/22
 224/25 225/1 236/8 236/9
 236/9 242/15 243/24 245/11
 245/13 245/21 248/20 251/10
 251/11 251/13 253/24 253/25
 254/7 254/24 255/11 255/12
 256/21 257/20 257/25 258/13
 259/5 259/15 259/25 262/9
 262/17 263/10 266/19 266/22
 266/24 267/1 268/2 269/15
 269/16 270/10 271/16 272/8
 they'd [3] 9/7 9/8 182/21
 they'll [2] 55/1 242/7
 they're [32] 5/22 12/24 12/25
 19/10 19/22 20/1 41/10 55/1
 65/8 65/10 69/20 74/4 114/21
 157/8 188/4 217/4 243/20
 243/21 243/21 243/23 244/15
 244/16 245/13 248/22 256/20
 258/17 262/20 269/2 269/15
 272/12 272/13 277/22
 they've [6] 242/7 246/19
 253/22 254/11 258/4 271/16
 thighs [3] 12/20 12/24 28/4
 thing [25] 7/10 8/24 27/13
 28/7 50/13 56/8 61/18 83/15
 92/24 104/9 104/18 124/3
 127/25 177/24 189/13 190/22
 213/21 215/2 235/7 240/15
 258/9 268/15 276/25 277/11
 282/24
 things [42] 5/1 7/15 9/14
 23/25 40/6 41/6 52/15 54/14
 54/18 57/6 72/10 73/12 73/13
 73/14 101/3 101/25 110/17
 110/22 110/24 111/19 124/4
 124/20 126/10 128/15 133/18
 133/24 147/10 149/10 153/19
 154/6 164/21 187/1 187/2
 200/25 210/9 220/22 242/24
 253/6 256/6 256/11 265/15
 279/8
 think [178] 5/2 7/7 9/5 9/6
 13/25 18/25 19/9 27/15 31/3
 37/4 39/13 39/25 42/13 42/24
 43/22 44/19 44/19 45/25 46/6
 52/23 54/19 55/24 56/13
 56/15 59/15 59/24 61/17
 61/19 61/25 62/20 64/11
 64/13 65/8 65/25 66/2 67/21

think... [142] 68/3 68/4
 68/17 69/25 70/8 70/15 74/4
 74/13 75/9 83/15 83/25 87/17
 88/9 89/10 89/25 90/16 90/16
 90/19 92/9 92/10 98/25
 100/17 100/18 101/21 104/4
 104/11 116/24 117/23 119/4
 125/1 126/5 126/12 127/12
 127/13 128/17 129/4 129/9
 130/18 130/19 137/17 144/5
 147/11 151/23 155/19 158/21
 159/6 160/25 162/12 164/12
 165/11 167/14 167/16 167/22
 175/19 176/11 176/16 177/22
 179/7 181/5 181/5 186/15
 186/22 198/24 198/25 204/13
 204/20 208/1 208/13 208/24
 212/5 212/7 212/8 216/12
 217/15 220/12 223/21 228/12
 233/12 234/1 235/17 235/18
 237/7 240/6 240/7 240/15
 241/15 242/18 243/17 243/20
 245/20 247/25 251/2 252/7
 252/7 252/17 253/1 253/2
 253/20 254/13 257/2 257/15
 258/15 258/20 259/22 260/22
 261/21 261/23 261/23 263/13
 264/5 264/15 265/3 265/4
 265/9 265/11 265/12 266/10
 266/19 268/2 268/4 268/12
 268/13 269/7 269/15 270/12
 270/14 270/15 270/16 272/5
 272/25 273/4 273/4 273/22
 276/4 276/4 276/16 276/16
 278/3 278/3 278/5 278/5
 279/23
 thinking [5] 20/20 20/21
 115/16 221/10 258/2
 thinks [2] 140/23 140/24
 third [18] 14/25 15/1 15/4
 15/12 29/7 50/18 51/5 65/25
 76/10 81/3 81/4 88/25 119/21
 120/23 121/5 159/12 208/14
 233/15
 this [485]
 Thomas [2] 250/15 250/17
 thoroughly [1] 241/6
 those [68] 7/15 13/1 32/14
 32/23 37/20 43/5 45/10 52/17
 53/18 53/21 54/14 59/11
 69/18 70/6 72/5 72/6 73/13
 73/14 73/14 75/8 76/3 93/20
 94/8 94/24 95/19 95/20
 107/21 120/20 129/5 131/5
 132/5 134/13 149/25 150/20
 154/14 156/3 157/17 159/6
 161/2 162/6 162/22 163/6
 164/11 168/20 168/21 169/8
 172/14 179/16 179/22 181/8
 186/21 188/1 198/13 210/9
 212/13 221/1 230/4 243/13
 243/13 243/13 245/22 247/6
 256/25 261/11 263/13 265/13
 265/15 266/16
 though [22] 5/5 7/10 27/10
 28/15 29/8 29/10 60/25
 160/23 163/1 165/13 177/4
 180/11 187/14 204/21 248/20
 249/3 267/1 270/19 271/19
 271/22 274/4 278/17

thought [22] 6/1 6/24 14/23
 46/12 46/18 46/22 116/5
 127/17 141/5 190/17 196/13
 220/7 229/23 234/22 240/14
 240/14 244/21 271/5 276/8
 276/19 277/8 279/25
 thoughts [3] 4/10 20/18
 215/15
 threat [1] 236/8
 threatening [1] 131/3
 three [22] 2/10 80/3 80/18
 96/19 101/3 118/3 119/23
 119/23 133/8 162/20 202/8
 202/15 204/16 221/17 230/4
 230/12 236/16 261/20 262/18
 262/19 263/13 279/19
 three-page [1] 202/15
 through [38] 18/6 42/1 46/8
 46/16 52/17 56/3 70/10 79/10
 82/8 85/4 85/5 87/1 91/25
 108/9 108/10 110/6 110/15
 113/7 134/7 142/9 142/10
 151/16 152/25 153/3 159/6
 163/5 192/24 222/11 227/25
 243/12 258/24 262/2 262/6
 266/5 271/3 273/2 273/18
 274/7
 throughout [4] 92/19 110/8
 126/8 217/23
 Thursday [1] 234/23
 till [2] 9/13 252/11
 time [127] 16/21 20/11 20/12
 21/25 23/12 24/8 24/8 24/23
 25/1 26/19 28/23 41/22 41/25
 42/18 43/7 44/21 47/22 49/23
 58/16 61/21 61/22 64/20
 70/10 75/17 78/16 82/14
 82/14 84/5 84/5 85/8 86/22
 87/14 88/6 93/11 97/22 98/5
 98/10 99/5 99/8 100/2 100/6
 102/8 103/7 109/12 115/21
 118/12 119/2 119/20 119/24
 124/24 125/6 125/19 125/21
 127/13 127/18 128/7 128/13
 130/25 132/13 132/14 132/21
 134/14 135/5 136/25 138/6
 139/9 140/6 140/24 141/8
 141/23 144/8 147/14 150/16
 151/20 151/24 152/17 152/19
 156/15 156/22 158/10 159/9
 161/24 165/1 165/3 165/20
 165/23 166/22 169/4 171/1
 171/5 177/14 177/16 186/17
 195/9 196/3 197/8 197/24
 197/24 205/17 209/8 212/24
 214/1 214/11 215/19 217/16
 218/16 219/5 219/13 221/4
 221/20 222/4 222/5 230/20
 238/25 245/5 246/11 247/25
 248/2 250/19 252/22 252/25
 263/13 274/10 280/5 281/20
 281/20 282/12
 timeline [3] 252/5 252/8
 252/16
 times [18] 39/13 39/14 39/14
 40/18 85/25 115/6 117/12
 119/23 128/7 128/8 128/11
 130/21 140/8 157/21 172/3
 172/4 193/24 252/19
 times at [1] 172/4
 timing [3] 244/10 251/1
 252/17

tiny [2] 33/9 33/10
 tired [5] 120/8 120/19 120/21
 227/6 280/2
 tissue [1] 36/5
 today [18] 44/25 78/3 114/2
 131/11 145/19 208/13 210/2
 210/10 210/13 233/12 234/15
 236/21 238/19 246/5 254/9
 262/14 268/6 270/8
 Todd [3] 1/14 269/16 274/11
 toe [1] 19/24
 together [11] 17/10 18/19
 23/12 43/8 65/4 77/15 131/19
 137/10 225/2 228/17 274/19
 toilet [1] 20/6
 token [1] 103/17
 told [126] 6/14 12/13 13/25
 17/1 22/6 22/8 22/8 22/8
 26/12 26/13 26/13 26/17
 26/19 28/14 28/18 29/1 29/13
 30/9 32/12 34/9 37/4 44/5
 48/1 53/11 53/12 53/12 53/15
 54/14 55/17 55/18 55/19 56/9
 79/1 80/11 81/6 83/9 87/18
 87/19 87/19 87/21 88/15 96/6
 97/11 97/11 99/1 99/3 99/3
 124/22 125/3 128/14 130/10
 132/22 136/23 146/9 148/19
 152/9 152/13 152/24 158/2
 166/22 167/21 169/13 171/19
 172/2 172/21 172/25 175/5
 177/2 179/15 185/19 186/5
 186/23 186/24 186/25 187/2
 191/22 193/6 193/12 193/15
 194/17 196/3 196/10 197/24
 198/9 198/16 204/24 205/13
 206/19 207/11 207/19 207/21
 208/1 208/19 209/21 210/4
 210/21 211/8 212/3 212/4
 213/8 214/11 214/20 215/17
 220/1 220/13 221/4 223/7
 227/15 229/19 232/9 234/22
 234/24 236/2 237/2 237/10
 239/6 240/3 243/3 244/22
 253/10 253/11 253/18 263/4
 268/7 268/16 279/22
 Tom [4] 249/14 250/4 250/14
 253/11
 tomorrow [6] 245/12 246/15
 247/22 263/4 263/25 274/14
 ton [1] 149/20
 tongue [2] 22/3 117/12
 tonight [2] 222/17 246/12
 too [21] 11/1 33/6 39/14
 74/18 111/2 123/14 123/14
 125/3 140/9 145/23 151/5
 151/6 154/6 208/22 243/25
 247/8 247/8 260/19 268/18
 270/2 281/9
 took [45] 4/23 11/23 11/25
 17/19 28/11 28/17 31/2 31/15
 31/17 31/21 34/3 36/16 39/12
 39/13 42/14 43/5 60/13 60/15
 61/23 62/15 63/5 82/11 86/4
 86/22 87/15 110/22 132/24
 146/21 163/12 175/4 182/8
 205/7 214/1 214/14 214/20
 218/21 218/23 221/1 224/25
 227/11 245/9 252/13 252/13
 252/13 268/9
 top [11] 10/23 37/1 38/4
 48/13 70/20 82/19 82/23 85/7

| Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 330 of 335 | | |
|--|--|--|
| <p>top... [3] 88/5 108/9 233/2</p> <p>Topamax [1] 144/19</p> <p>topic [2] 106/8 258/6</p> <p>topics [2] 99/7 259/16</p> <p>torn [4] 13/18 35/24 36/1 36/5</p> <p>total [1] 263/13</p> <p>totally [2] 110/14 278/24</p> <p>touch [2] 57/6 223/13</p> <p>touching [2] 13/16 171/23</p> <p>toured [1] 55/15</p> <p>towards [1] 259/12</p> <p>towel [2] 11/17 29/18</p> <p>toxicologist [1] 272/21</p> <p>track [1] 101/6</p> <p>traditions [1] 101/22</p> <p>trailer [34] 20/16 21/15 22/15 23/4 23/18 23/24 24/1 24/18 25/25 26/8 30/5 30/9 30/16 31/9 54/5 61/4 102/12 249/15 249/17 250/1 250/3 250/8 250/21 250/22 251/6 251/9 251/11 251/13 252/10 252/10 252/20 252/24 252/25 253/4</p> <p>trained [1] 4/5</p> <p>training [1] 23/13</p> <p>transcript [5] 1/10 1/24 67/20 245/18 283/4</p> <p>transcription [1] 1/24</p> <p>transcripts [2] 67/16 67/17</p> <p>transfer [2] 167/15 167/23</p> <p>transferred [4] 81/8 118/24 120/12 120/15</p> <p>transmittal [2] 128/18 128/19</p> <p>transmitted [4] 142/3 142/6 148/24 181/10</p> <p>transported [1] 258/7</p> <p>trauma [4] 36/4 83/7 84/2 84/3</p> <p>traumatic [9] 34/18 38/8 38/14 39/7 39/8 39/16 40/15 40/17 96/7</p> <p>tray [1] 216/5</p> <p>treated [1] 89/3</p> <p>treater [1] 97/1</p> <p>treating [3] 111/8 111/18 133/23</p> <p>treatment [5] 39/10 40/16 131/1 272/9 275/4</p> <p>treatments [1] 44/13</p> <p>trial [12] 1/10 4/6 32/21 32/24 33/1 52/24 242/4 245/4 245/5 245/7 246/1 282/3</p> <p>tried [6] 13/7 113/19 122/10 212/13 219/18 244/9</p> <p>trip [4] 129/3 156/2 232/18 232/21</p> <p>triple [1] 47/16</p> <p>trips [2] 137/21 138/7</p> <p>troops [1] 263/2</p> <p>trophy [2] 156/16 157/19</p> <p>trouble [4] 49/6 91/2 94/15 171/1</p> <p>troublemakers [1] 54/9</p> <p>truck [5] 61/11 62/2 62/4 62/21 63/8</p> <p>true [16] 47/21 47/23 67/9 114/8 122/1 132/17 133/11 150/13 188/4 191/23 197/5</p> | <p>trust [1] 28/16</p> <p>trusted [1] 258/12</p> <p>trustworthiness [1] 160/17</p> <p>truth [8] 58/13 58/14 98/7 114/12 198/25 200/13 200/15 200/24</p> <p>truthfulness [1] 246/7</p> <p>try [22] 9/14 13/13 21/17 25/19 37/20 42/1 45/2 91/6 95/4 99/9 106/12 125/20 131/4 147/12 149/15 150/22 151/1 151/2 195/5 203/10 207/6 244/19</p> <p>trying [34] 6/25 21/19 31/24 39/3 40/19 87/13 87/15 87/25 88/2 109/6 113/17 113/18 120/17 124/9 126/3 136/12 147/13 151/11 151/12 153/23 160/24 169/23 177/22 180/24 186/15 199/1 216/20 219/7 243/18 244/16 245/10 246/8 246/12 269/16</p> <p>tsunami [1] 136/5</p> <p>Tuesday [1] 133/7</p> <p>Tumbarella [1] 263/7</p> <p>turn [22] 18/12 21/16 21/19 31/20 45/19 69/8 75/25 76/5 93/4 95/25 106/7 112/6 131/2 136/17 140/18 141/1 156/11 157/2 157/3 184/25 234/3 267/15</p> <p>turned [1] 151/17</p> <p>turns [2] 24/15 240/16</p> <p>twice [3] 49/21 52/19 242/4</p> <p>two [55] 11/7 27/18 28/3 34/3 40/22 40/24 67/15 67/16 71/9 73/19 80/4 80/13 95/23 119/21 119/23 120/24 142/12 142/22 149/24 152/20 154/2 154/13 168/23 177/17 180/11 182/21 186/20 186/21 187/14 208/20 210/24 214/21 214/22 216/1 220/19 221/16 225/12 228/13 230/1 230/6 230/8 230/11 236/14 241/22 242/5 243/1 246/20 253/5 256/22 270/7 275/21 277/11 279/7 279/18 282/24</p> <p>two-minute [3] 228/13 230/8 230/11</p> <p>Tyler [11] 209/3 221/21 222/5 255/7 255/8 256/17 263/5 263/10 264/14 265/18 265/20</p> <p>type [2] 39/10 217/7</p> <p>types [2] 128/3 128/4</p> <p>typical [2] 220/2 228/5</p> <p>typing [1] 211/11</p> | <p>unaware [1] 62/19</p> <p>uncomfortable [2] 39/2 262/3</p> <p>under [54] 6/9 9/6 9/7 12/3 36/5 50/1 50/20 51/7 51/15 51/20 59/19 59/25 69/13 75/19 84/4 84/5 90/8 90/14 107/12 131/13 131/16 131/22 132/14 132/22 158/21 160/19 161/22 163/9 163/23 177/18 178/24 190/9 190/17 191/24 193/17 198/13 198/25 199/23 207/4 224/14 231/20 237/7 241/25 253/21 253/24 256/12 257/4 257/8 265/14 271/7 272/3 272/6 272/10 272/14</p> <p>underneath [1] 13/6</p> <p>underscored [1] 118/6</p> <p>understand [57] 4/3 7/18 8/10 8/12 8/19 12/13 36/8 48/22 70/2 71/18 71/20 71/22 82/15 84/6 84/9 95/13 95/16 98/14 100/22 101/21 103/4 107/2 108/23 109/1 109/9 110/25 111/7 111/9 115/14 115/19 117/16 118/2 122/15 122/15 123/3 124/7 124/10 134/9 142/14 142/17 142/18 144/22 147/16 161/13 165/18 169/4 172/21 175/22 192/13 192/20 194/24 215/7 241/22 248/19 251/21 276/7 276/23</p> <p>understanding [18] 25/23 41/5 45/2 52/5 52/6 52/7 52/10 58/12 60/20 72/19 72/24 73/15 82/7 106/24 161/10 161/11 234/4 248/19</p> <p>understands [2] 50/13 229/13</p> <p>understood [21] 8/8 83/12 90/13 90/13 93/10 95/22 103/9 115/11 115/11 116/20 118/19 125/12 128/5 167/18 193/20 193/22 194/12 219/8 277/9 279/15 279/19</p> <p>underwear [3] 11/18 11/21 11/23</p> <p>unexpected [1] 101/12</p> <p>unfair [5] 254/3 254/8 280/17 280/21 282/19</p> <p>unfairly [7] 60/2 60/8 61/3 61/7 272/13 273/4 282/21</p> <p>unfamiliar [1] 204/10</p> <p>unfavorable [1] 40/6</p> <p>unfortunately [2] 142/5 232/25</p> <p>unfounded [1] 6/8</p> <p>unhappy [3] 235/13 235/16 235/16</p> <p>unison [1] 48/24</p> <p>UNITED [3] 1/1 1/11 53/16</p> <p>unknown [4] 192/9 209/15 209/20 209/25</p> <p>unless [7] 159/6 223/17 224/9 248/25 254/13 280/13 280/15</p> <p>unlikely [1] 101/19</p> <p>unnecessary [1] 205/9</p> <p>unprotected [2] 28/9 239/25</p> <p>unredacted [4] 276/25 277/4 277/13 277/16</p> <p>unsure [2] 207/23 215/18</p> <p>until [20] 16/14 78/24 93/9 116/9 117/7 125/25 132/7 132/9 137/17 165/22 166/2</p> |
| U | | |
| <p>U.S [2] 2/14 101/16</p> <p>uh [13] 66/14 92/16 97/13 173/21 175/11 216/25 220/4 221/25 225/17 225/22 231/16 232/3 236/17</p> <p>uh-huh [12] 66/14 92/16 97/13 175/11 216/25 220/4 221/25 225/17 225/22 231/16 232/3 236/17</p> <p>ultimately [1] 268/10</p> <p>unassisted [1] 116/9</p> | | |

| U Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 331 of 335 | | |
|--|---|---|
| until... [9] 167/15 167/22 185/18 203/6 222/5 226/21 245/3 245/7 252/2 untoward [1] 244/15 unusual [1] 226/19 unwanted [1] 124/20 unwilling [1] 123/22 up [152] 9/12 12/5 13/2 13/18 13/19 16/7 17/1 17/8 17/11 17/21 17/24 19/20 19/22 23/14 26/1 26/5 28/2 28/22 29/8 29/11 29/11 36/13 37/6 37/18 43/7 48/5 48/11 53/5 53/8 55/21 57/7 62/2 62/17 67/23 71/9 75/16 76/10 76/10 82/17 82/18 82/24 86/12 87/5 96/1 100/17 100/18 105/4 106/11 106/15 107/14 108/11 108/16 108/20 113/25 117/6 122/17 122/18 123/18 125/21 126/17 126/19 131/9 132/7 132/9 132/11 133/4 136/8 139/7 143/18 148/12 152/8 155/5 169/10 172/22 173/6 176/3 176/6 178/5 178/18 179/20 180/13 181/14 181/19 182/20 185/3 187/19 188/9 188/19 189/17 189/22 190/23 191/2 194/16 200/3 200/4 205/8 206/8 208/2 209/4 209/7 211/6 219/3 220/14 220/18 220/20 220/21 220/22 221/11 222/12 223/8 224/11 227/10 227/10 228/23 231/2 231/11 231/24 231/25 232/2 232/9 233/13 233/20 234/1 234/5 234/10 236/1 236/9 236/11 236/12 236/15 237/3 238/6 240/1 243/21 244/16 244/20 245/6 246/12 247/3 247/20 248/2 249/24 252/4 258/6 261/20 262/18 263/2 264/15 270/3 272/17 274/9 279/22 upon [12] 51/14 53/18 53/21 69/20 161/8 162/6 162/22 213/6 213/17 213/18 223/22 256/21 upper [2] 16/7 89/21 upset [5] 84/23 86/8 92/22 210/20 233/18 us [76] 6/14 13/25 17/1 23/7 23/24 31/4 37/4 37/9 41/15 42/14 48/23 52/15 55/17 55/18 55/18 55/19 57/7 63/5 70/19 73/15 79/14 81/6 87/24 94/25 95/13 96/6 98/9 98/25 102/13 106/10 116/3 122/24 124/22 125/3 125/5 126/10 128/14 130/10 132/22 136/23 140/1 148/6 152/9 152/13 152/24 166/22 169/4 169/13 171/19 172/2 172/21 177/2 184/9 184/21 191/9 191/13 191/16 192/10 202/8 205/13 206/19 210/21 211/18 214/20 234/22 236/21 242/8 242/10 243/24 245/9 245/21 254/9 256/6 256/7 268/16 272/1 use [11] 20/7 22/3 25/19 | 25/20 55/1 66/5 69/2 103/19 214/5 222/15 254/13 used [17] 57/15 69/24 90/3 106/25 139/10 146/11 151/13 178/9 181/5 181/5 190/25 217/7 251/11 251/21 262/17 272/20 272/24 useful [1] 101/23 USG [1] 190/7 using [2] 18/9 68/23 usual [2] 109/8 189/3 V V98 [1] 99/15 vacation [1] 221/13 vagina [1] 275/16 vaginal [2] 13/11 127/12 vaginally [2] 13/20 66/9 vaguely [6] 268/5 268/10 268/22 269/8 269/21 270/3 validating [1] 73/7 value [6] 164/9 280/9 280/16 282/5 282/6 282/18 van [3] 60/3 61/4 63/8 Vanetta [1] 179/3 variety [3] 94/22 95/7 95/7 various [3] 77/3 147/1 216/22 vehicle [3] 61/13 62/10 178/6 vehicles [1] 55/2 verbal [2] 79/7 200/19 verbiage [2] 214/4 279/9 verify [1] 90/3 version [7] 195/11 196/16 277/5 277/14 277/25 279/15 279/22 versions [1] 67/5 versus [5] 39/20 106/18 106/21 117/25 118/10 very [50] 6/16 7/5 15/5 19/11 31/23 40/2 52/23 56/4 70/3 77/11 86/2 86/8 92/22 93/18 94/24 100/23 103/16 109/6 112/6 112/8 114/14 120/19 121/21 124/20 128/7 128/8 128/11 128/23 132/16 134/13 135/21 147/17 148/16 152/14 153/24 157/1 170/14 179/7 195/3 196/7 245/15 248/25 252/21 257/25 270/21 271/6 272/9 280/4 281/17 282/23 vest [1] 44/19 via [1] 33/4 Vicknair [1] 1/15 victim [20] 54/6 78/12 80/9 81/6 81/6 81/8 89/4 89/4 90/1 90/3 92/19 93/12 93/17 93/18 186/2 186/12 280/14 280/17 280/21 282/19 Victim Daigle [2] 90/1 90/3 victim's [6] 77/21 185/11 186/1 186/8 190/20 193/17 victims [5] 45/8 45/16 45/21 45/22 46/16 video [2] 173/16 173/17 videos [1] 264/1 videotaped [1] 263/11 view [1] 277/23 viewed [1] 54/9 violate [1] 67/1 violation [1] 279/12 violative [1] 275/17 violence [7] 5/15 5/20 6/20 | 7/8 97/19 98/18 99/1 viral [7] 39/20 106/18 106/21 108/8 117/25 117/25 118/10 Virus [2] 142/14 142/17 vis [2] 272/2 272/2 Vis-a-vis [1] 272/2 visible [2] 84/23 89/8 vision [2] 119/24 121/22 visit [10] 97/7 109/7 110/15 145/20 146/20 150/15 151/18 156/3 156/7 272/4 visits [1] 146/22 vividly [1] 172/9 voce [1] 135/17 voice [6] 106/12 136/10 139/17 139/21 140/4 140/15 volume [1] 126/15 voluntarily [2] 117/15 117/17 voluntary [3] 115/8 116/12 279/9 volunteered [1] 260/25 Vorpahl [8] 2/3 48/5 266/6 273/3 276/13 276/18 277/6 279/22 W wait [3] 121/1 174/9 213/11 waiting [2] 9/13 247/25 waitress [1] 113/22 waive [5] 48/15 48/17 48/20 51/13 51/14 wake [1] 131/9 waking [2] 190/23 191/2 walk [3] 29/9 115/5 226/16 walked [5] 28/9 225/12 226/2 226/18 226/24 walking [4] 107/20 116/8 116/14 187/19 walks [1] 42/4 wall [2] 122/8 122/9 walls [2] 116/10 116/16 want [84] 4/3 8/6 8/19 10/21 19/13 19/14 20/21 20/22 20/22 21/3 21/4 21/4 21/4 21/5 21/12 21/13 22/17 24/3 25/3 25/5 25/7 25/8 25/9 34/6 36/21 38/7 42/8 46/4 48/13 52/24 53/1 57/6 67/18 69/1 69/24 87/15 89/18 94/15 95/13 101/22 103/14 103/16 104/18 104/19 104/21 104/23 105/24 118/21 119/20 132/6 137/1 139/4 147/5 147/15 149/11 150/17 151/19 152/3 153/20 159/5 161/10 170/1 182/12 191/18 200/10 203/11 222/17 223/2 224/9 226/13 229/13 240/24 241/22 247/2 247/13 247/24 254/12 267/3 267/20 270/1 273/20 273/20 277/4 281/9 wanted [43] 34/4 38/25 42/6 43/18 45/1 45/5 45/17 56/6 77/25 94/15 94/16 103/9 120/21 133/1 141/11 141/14 141/25 145/13 145/13 147/4 147/24 148/19 149/8 149/9 152/7 155/13 156/17 160/5 178/19 180/22 200/11 213/1 213/7 239/15 240/4 240/23 244/21 249/3 261/13 262/9 262/19 270/8 270/23 |

| W Case 4:07-cv-02719 Document 305 Filed 11/18/11 Page 332 of 335 | | |
|--|---|--|
| wanting [4] 63/17 132/25 220/21 260/1 | 245/4 252/19 254/7 258/16 263/12 264/5 266/15 270/10 270/19 270/22 274/1 274/15 279/3 | 52/19 55/11 96/16 97/21 99/4 110/6 113/7 115/17 120/4 120/9 122/10 129/5 146/21 149/8 149/25 156/3 156/7 164/20 170/3 173/3 205/12 208/10 210/21 211/6 211/12 234/23 |
| wants [9] 56/7 68/8 144/21 144/25 176/18 241/23 256/11 261/12 262/25 | weak [2] 117/3 117/17 | were [227] 8/25 10/4 11/15 11/20 11/22 12/20 12/22 13/20 15/9 19/11 19/11 19/12 19/22 19/24 22/15 23/10 23/16 23/24 30/8 32/12 33/9 33/9 34/20 36/22 36/25 37/1 38/8 39/9 40/4 40/5 40/8 40/11 40/12 42/16 43/7 44/21 48/1 52/15 53/4 53/5 53/8 53/11 54/8 54/19 55/9 59/8 59/24 63/16 64/2 64/6 67/16 71/7 77/19 84/24 84/25 84/25 85/7 85/9 86/10 86/17 87/18 87/22 88/6 88/9 88/12 89/6 89/16 95/19 95/22 95/22 98/17 98/20 102/2 102/5 102/6 106/22 107/21 107/22 109/2 109/11 110/4 110/14 110/16 113/3 114/11 114/12 115/5 115/12 115/13 117/20 117/23 119/12 119/22 119/24 120/3 120/5 121/14 122/2 123/11 124/11 128/3 128/7 131/13 131/16 131/18 132/14 132/22 135/5 137/8 137/14 137/24 138/11 139/20 141/6 141/10 141/19 142/3 142/21 142/25 144/8 144/18 146/24 147/14 148/23 151/23 153/2 154/5 159/2 160/20 161/16 161/16 161/24 165/9 168/24 169/23 171/16 174/10 174/19 179/8 179/16 179/16 180/13 181/2 181/8 181/9 182/18 183/20 184/11 185/15 185/17 186/19 187/9 187/24 190/21 191/12 191/24 193/16 193/20 193/21 194/20 195/8 195/24 196/11 197/23 198/13 203/14 203/21 203/23 204/6 204/10 205/6 205/13 206/6 206/13 207/23 208/22 209/7 209/8 209/14 209/19 209/25 210/7 211/8 211/11 211/16 212/25 214/11 215/18 216/10 217/11 217/12 219/16 220/7 221/6 225/1 225/1 227/10 234/5 234/5 237/22 237/25 238/7 238/25 242/2 242/3 242/23 243/13 243/13 243/24 245/5 245/8 245/10 245/21 249/5 249/5 252/14 253/10 253/15 253/23 254/13 256/23 257/25 258/11 259/25 262/9 265/13 270/8 |
| war [3] 33/9 258/3 258/21 | weakness [2] 115/6 117/14 | |
| warm [1] 236/9 | wear [2] 29/18 44/17 | |
| warned [1] 179/3 | wearing [3] 20/11 20/12 179/8 | |
| warning [1] 18/9 | Wednesday [9] 136/19 179/11 223/1 223/21 244/25 247/22 264/2 264/3 264/6 | |
| warts [2] 142/15 275/1 | week [9] 6/1 48/5 63/16 118/23 119/23 128/24 242/8 242/16 245/21 | |
| was [713] | weekend [8] 4/2 4/16 9/18 9/22 168/21 243/24 244/13 245/5 | |
| Washington [1] 250/19 | weeks [9] 34/3 40/22 40/24 67/3 67/4 67/5 67/15 67/16 177/17 | |
| wasn't [44] 4/23 5/5 16/22 19/20 22/1 22/2 31/13 38/3 42/20 53/12 53/14 57/23 66/19 94/4 95/12 96/23 116/5 120/19 121/19 126/8 130/15 133/20 149/23 150/4 151/15 170/14 170/25 178/2 196/2 200/19 215/16 220/9 223/16 234/2 234/24 234/25 246/21 249/2 249/5 249/20 263/16 265/10 276/1 279/17 | weigh [1] 269/23 | |
| watch [4] 23/10 65/4 80/2 80/3 | weight [1] 282/11 | |
| watched [1] 67/3 | Welcome [1] 9/22 | |
| water [2] 21/5 29/16 | well [180] 4/21 5/10 6/15 7/19 9/12 11/1 11/10 18/21 19/5 19/10 23/25 30/6 36/3 37/11 38/16 38/22 39/9 41/9 45/1 45/13 46/14 48/11 52/4 52/10 52/23 54/25 58/19 60/17 61/16 61/17 61/21 62/1 62/14 62/23 63/2 64/7 64/19 69/5 70/11 71/16 72/6 73/2 75/4 80/23 81/17 83/19 87/8 88/5 94/17 98/7 98/14 99/17 100/4 100/14 101/24 103/16 103/21 105/6 106/6 106/12 107/2 108/13 109/3 110/10 111/15 112/15 117/11 120/11 120/15 120/23 124/12 124/18 124/18 125/20 128/11 131/11 137/16 138/11 139/16 140/12 141/19 141/20 145/11 148/12 149/1 149/12 149/23 150/22 153/17 155/23 156/14 159/14 163/19 164/6 164/13 165/16 166/10 166/24 168/23 169/18 172/14 173/2 173/4 176/4 176/11 176/22 177/21 178/10 183/24 184/14 185/3 186/1 188/3 188/6 188/9 189/5 189/7 192/15 194/14 197/12 198/2 198/24 202/23 209/18 211/1 212/17 214/6 214/15 215/15 215/23 218/25 224/2 225/6 227/24 228/22 231/21 233/1 233/12 233/18 233/21 233/24 235/6 235/10 235/22 236/20 236/23 236/25 237/6 237/15 243/23 244/3 245/16 248/9 248/16 248/22 250/10 255/9 256/5 256/10 256/25 258/23 259/22 261/10 262/21 265/2 266/10 266/18 268/13 268/15 269/25 270/21 275/15 276/24 277/15 278/8 278/14 280/3 280/25 281/8 282/8 | |
| way [34] 15/9 22/12 36/25 37/2 37/18 54/16 62/5 69/8 76/22 92/11 103/17 117/15 133/23 140/7 143/4 164/13 183/21 183/23 201/11 207/6 212/10 216/16 232/7 232/11 232/12 235/4 246/8 258/18 260/3 269/6 269/8 269/23 271/3 278/11 | | |
| ways [5] 46/10 46/15 77/2 95/8 220/14 | | |
| we [376] | | |
| we -- I [1] 110/8 | | |
| we'll [32] 12/5 58/21 71/1 80/20 89/22 103/11 105/4 114/9 115/20 118/12 134/13 135/9 136/18 140/13 147/22 155/18 158/8 164/13 167/12 176/2 180/23 186/6 207/8 222/16 223/9 227/25 231/25 238/21 241/1 247/6 273/13 274/9 | | |
| we're [79] 6/10 6/16 7/8 7/8 8/14 19/16 19/17 26/4 31/6 31/6 49/14 62/2 67/6 68/18 68/23 73/4 74/6 76/22 77/1 77/4 80/20 82/15 85/7 91/1 92/3 92/13 96/2 96/4 101/1 103/5 103/18 106/8 106/14 115/19 115/22 123/9 124/19 125/20 130/2 134/6 134/10 134/12 137/20 142/1 142/1 142/2 150/18 160/2 171/3 174/24 180/11 185/3 201/5 209/7 210/25 219/7 222/11 227/7 243/18 244/14 244/17 247/1 254/9 256/18 257/13 262/4 262/14 263/2 263/11 263/15 265/18 266/2 267/11 273/18 274/22 277/20 277/20 281/1 282/14 | | |
| we've [28] 5/21 52/18 67/22 69/16 74/14 87/3 112/11 | went [43] 7/16 26/24 26/25 27/4 28/23 28/25 30/23 33/5 34/16 34/17 39/11 40/13 40/18 42/7 42/21 49/21 52/19 | weren't [15] 13/1 36/23 37/24 40/2 40/2 47/14 70/7 179/22 196/4 211/11 227/11 233/24 253/16 261/9 276/9 West [1] 1/22 wet [1] 29/19 WF [1] 144/10 what [366] what's [17] 14/3 41/15 67/15 69/1 69/3 105/8 115/16 |

| W Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 333 of 335 | | |
|--|---|--|
| what's... [10] 149/21 152/2 201/8 237/5 249/12 250/2 259/21 263/17 273/12 279/13 whatever [15] 7/16 25/2 37/21 87/5 89/18 94/10 95/21 113/18 155/21 178/24 196/25 221/9 249/4 261/20 272/12 whatnot [2] 67/6 166/23 whatsoever [5] 6/4 136/20 178/15 181/24 233/10 when [155] 6/22 8/7 10/4 11/25 12/16 12/25 13/1 16/13 16/16 17/8 18/22 19/12 20/16 23/11 23/15 24/1 26/9 26/24 28/2 28/22 28/23 29/8 29/18 29/20 30/4 30/9 30/22 32/2 33/1 33/7 33/11 33/25 34/19 34/25 35/21 36/16 37/14 38/4 40/7 41/11 41/22 41/24 42/2 42/16 42/20 42/21 43/22 44/8 44/17 45/18 48/1 52/6 53/4 53/21 54/8 55/22 60/9 61/5 63/16 64/18 66/15 69/18 72/13 79/13 83/16 84/16 86/23 86/24 88/1 89/8 90/10 95/14 106/25 109/2 109/4 110/18 113/3 116/15 117/17 118/12 124/20 125/18 125/20 126/11 127/15 129/5 129/5 131/15 131/16 132/11 132/12 132/14 132/21 136/25 137/6 139/17 139/21 140/6 141/21 142/20 142/25 147/6 147/21 151/20 155/17 155/18 155/22 157/21 157/24 158/4 158/5 162/5 165/6 165/8 166/5 167/6 167/10 167/21 172/6 172/15 173/6 178/5 180/12 180/14 186/23 188/8 194/18 208/2 208/18 208/23 211/11 213/21 216/10 217/16 221/12 224/10 236/9 236/10 236/21 237/19 237/20 238/7 244/24 245/1 245/6 249/19 249/20 250/4 252/6 252/23 256/3 262/20 275/25 278/1 281/20 Whenever [1] 169/16 where [74] 10/22 12/20 12/23 15/4 19/4 19/9 19/19 23/18 28/22 29/11 30/6 31/15 39/18 47/9 55/12 55/13 60/15 62/5 62/7 82/20 84/4 84/7 85/18 88/11 88/12 89/6 89/25 90/5 112/8 114/7 114/21 116/13 121/9 122/2 127/2 128/14 129/15 137/24 138/9 140/3 140/8 140/22 146/16 148/4 150/15 151/11 155/13 155/15 155/21 159/10 160/2 162/6 162/12 162/18 166/10 167/5 168/13 169/8 169/24 171/23 176/15 185/10 207/7 217/21 222/12 224/14 231/22 252/14 253/22 253/23 259/6 261/8 275/6 275/10 whereabouts [2] 169/14 169/17 whether [37] 6/20 16/17 36/1 39/19 46/19 46/20 51/25 52/7 67/9 78/3 78/3 102/20 103/11 103/19 103/22 111/16 111/23 | 112/16 112/23 123/25 124/1 124/1 180/2 193/10 193/11 202/8 227/12 227/12 248/22 249/19 251/5 259/14 267/7 271/13 272/10 277/2 279/21 which [71] 13/2 36/5 45/8 45/15 46/18 49/10 50/16 52/8 67/11 69/8 71/2 72/10 74/25 76/23 77/2 82/10 82/24 85/7 85/22 89/3 92/4 92/15 94/6 97/2 103/23 105/13 107/13 109/5 111/17 113/20 115/7 116/9 117/13 117/15 119/12 119/24 128/2 131/2 132/4 134/15 135/10 140/14 142/15 145/9 152/23 159/13 164/7 168/20 172/10 177/2 195/10 196/10 218/1 220/14 220/19 225/1 225/12 229/15 230/23 231/3 239/25 243/14 245/7 252/14 255/25 258/4 263/11 265/14 274/1 278/21 281/6 while [26] 23/15 27/1 27/3 27/7 73/24 95/22 106/9 130/2 136/10 146/23 147/17 187/24 198/13 203/10 205/6 228/3 247/19 247/25 249/15 249/25 252/20 263/2 267/16 272/7 277/22 282/20 whiskey [2] 179/18 205/6 white [5] 61/4 144/10 158/2 158/4 191/21 who [77] 6/21 10/25 21/12 25/10 29/24 32/17 32/21 32/23 33/11 33/20 34/3 34/14 34/16 35/9 40/25 41/17 43/20 43/23 45/16 48/15 53/1 57/12 57/14 61/9 61/10 62/15 70/18 71/16 71/16 85/20 86/13 89/3 92/9 102/7 102/14 111/3 112/20 147/1 148/24 149/4 149/22 151/4 151/4 152/2 153/2 153/12 153/24 158/1 159/2 161/4 173/2 174/8 184/18 191/10 193/6 193/12 200/4 209/1 209/7 217/10 217/10 218/12 221/20 223/9 226/15 238/1 240/12 246/18 256/15 256/17 263/15 263/16 266/21 272/4 272/21 277/24 281/5 who's [5] 136/2 164/5 192/9 246/5 264/10 whoever [2] 84/8 200/2 whole [26] 26/15 26/17 26/19 36/3 47/7 50/13 52/3 68/17 83/15 83/17 95/10 108/3 108/4 127/25 132/3 160/5 160/25 189/13 198/25 227/24 239/14 239/20 246/10 258/3 271/12 276/25 whom [1] 150/12 whose [5] 27/21 60/3 212/22 254/25 255/2 why [63] 16/13 21/14 25/7 27/5 29/5 30/14 34/6 37/9 38/5 38/24 43/5 43/16 45/11 47/8 52/21 54/17 66/18 80/24 81/13 96/20 98/3 98/6 101/21 114/5 120/21 122/10 125/13 136/12 146/19 151/19 153/12 156/4 156/7 157/22 163/3 | 166/24 196/15 197/3 198/4 199/11 212/16 220/22 226/24 226/24 227/1 227/1 229/19 233/13 237/4 245/9 251/2 251/20 256/3 258/12 260/20 261/11 261/12 263/24 274/24 280/5 280/22 282/6 282/8 wife [6] 77/23 92/22 93/1 93/3 93/7 149/12 will [74] 8/5 14/6 22/8 24/4 25/20 25/21 49/12 50/20 56/12 57/2 61/8 61/10 62/4 68/22 71/4 75/7 82/4 83/19 84/5 90/6 90/25 91/24 95/4 96/15 100/2 100/4 102/14 109/5 112/5 112/8 115/9 129/16 134/18 140/12 145/24 147/22 154/17 159/17 163/4 163/6 163/7 163/8 164/7 192/17 192/24 192/25 195/5 199/2 199/4 201/25 216/6 223/14 229/9 232/14 234/3 236/9 236/13 245/12 247/12 247/13 249/24 250/25 251/15 256/2 258/21 259/12 260/23 261/7 263/1 263/11 263/16 268/13 272/22 274/17 willing [4] 101/13 104/6 105/17 256/12 wind [1] 113/25 winning [3] 86/9 86/18 88/12 wipe [2] 42/20 42/22 wish [3] 158/19 172/8 177/5 wished [1] 261/6 wishes [1] 71/2 withdraw [2] 273/13 276/14 within [9] 40/3 65/17 100/5 110/15 161/8 161/22 178/1 214/12 241/25 without [24] 62/12 65/9 65/14 97/22 98/4 98/8 107/11 124/13 130/1 130/6 131/23 143/17 148/16 155/4 160/11 168/5 176/8 176/16 183/12 189/16 192/16 206/24 231/1 267/8 witness [41] 69/19 69/19 69/21 69/21 91/17 100/1 105/7 159/11 159/11 159/12 163/20 170/18 177/6 189/1 198/22 223/5 223/7 240/3 240/20 240/21 244/7 244/8 246/18 247/15 248/10 248/12 251/21 254/2 254/9 256/11 256/16 257/17 263/15 264/2 264/5 265/5 265/22 266/12 267/22 280/1 280/1 witness' [1] 166/21 witnesses [16] 3/3 79/16 101/5 159/4 162/7 162/20 194/20 242/6 242/22 245/11 256/24 258/4 258/21 263/3 270/9 274/9 woke [13] 13/2 17/1 17/8 17/11 17/21 28/2 28/22 29/8 172/22 173/6 179/20 182/20 224/11 woken [2] 208/2 222/12 woman [6] 109/9 153/11 154/9 206/16 208/20 264/21 woman's [1] 281/10 women [6] 46/9 53/25 57/3 |

| | | | |
|--|---|--|--|
| W Case 4:07-cv-02719 Document 305 Filed in TXSD on 06/27/11 Page 334 of 335 | | 120/18 120/19 120/20 121/16 122/2 124/4 124/5 124/15 124/18 126/1 126/10 130/17 130/25 131/7 131/7 132/2 133/19 134/2 134/14 134/23 135/25 137/24 138/4 138/16 138/17 139/11 139/22 139/24 139/25 140/7 140/7 140/8 141/5 141/9 141/12 141/21 141/23 142/24 142/25 143/5 146/19 146/23 147/5 147/8 147/17 147/18 148/10 148/11 149/4 149/13 151/19 152/1 152/10 152/15 152/23 152/24 153/2 153/14 153/14 153/20 154/5 155/15 155/21 157/12 159/15 159/16 159/21 162/24 163/8 163/9 163/20 163/23 164/2 164/6 164/12 164/22 165/5 165/5 168/14 169/9 170/6 170/16 173/7 173/12 174/8 175/16 176/5 179/2 179/4 183/18 184/11 186/2 189/7 197/5 197/6 197/6 197/7 197/7 197/21 197/22 197/22 199/25 200/2 200/4 200/6 201/6 201/7 201/7 202/7 202/17 203/24 204/2 206/4 210/12 212/21 213/20 213/20 213/22 213/24 214/5 214/10 214/10 215/5 215/7 221/7 221/11 223/1 223/25 224/4 224/13 224/13 225/2 225/10 226/15 228/18 229/4 233/13 233/17 233/20 233/21 233/25 234/2 235/13 235/14 240/3 240/10 242/6 242/12 242/15 243/15 245/1 246/9 247/21 247/22 253/9 253/12 253/19 253/24 253/25 254/6 254/24 255/4 255/11 255/12 259/14 262/15 264/22 265/13 265/15 272/18 274/7 274/13 274/18 280/23 281/20 | wrote [31] 26/8 26/9 87/21 88/4 88/11 112/12 112/17 121/24 134/12 134/13 139/8 145/25 146/4 146/6 146/8 150/21 194/10 197/1 200/2 200/25 208/7 209/24 213/16 218/19 221/24 234/4 234/13 234/18 236/21 238/6 269/4 |
| women... [3] 140/10 266/8 266/22 | | | |
| won't [2] 123/14 232/2 | | | |
| wonderful [1] 256/6 | | | |
| wondering [3] 41/14 153/12 226/5 | | | |
| word [10] 60/24 146/11 181/5 181/6 202/16 202/18 237/21 239/24 239/25 251/11 | | X | |
| words [17] 10/22 16/5 36/6 37/9 87/1 150/20 151/13 178/9 179/16 179/16 179/22 181/8 183/19 185/20 188/16 188/17 213/16 | | Xanax [2] 41/1 41/2 | |
| wore [3] 44/19 260/19 262/1 | | Y | |
| work [44] 23/9 26/24 28/9 28/11 29/12 47/1 47/1 55/4 120/20 131/8 131/10 136/13 137/2 150/13 152/25 153/3 153/3 153/7 153/16 154/3 154/4 173/23 178/10 178/23 180/13 220/2 222/17 225/12 226/3 226/17 227/11 227/11 227/16 227/21 228/4 228/5 230/15 231/15 232/7 232/11 232/12 241/21 251/18 252/2 | | Yan [1] 31/3 yeah [65] 10/19 19/3 19/6 20/15 24/22 43/10 47/17 56/23 64/1 70/8 70/11 81/23 88/10 90/10 92/10 92/14 96/1 98/2 100/17 107/1 112/3 115/15 123/17 124/18 138/13 145/17 148/25 153/14 154/10 167/11 167/14 167/16 168/16 169/25 190/1 191/6 199/8 204/23 206/2 207/18 207/20 209/12 212/9 214/1 215/6 215/6 220/9 221/3 221/14 228/12 228/20 230/10 233/14 239/2 240/5 240/6 241/6 241/16 264/20 264/24 265/4 267/4 267/11 268/7 268/10 | |
| work-related [1] 220/2 | | year [11] 84/3 84/14 85/20 132/7 144/4 144/10 149/5 172/10 182/13 183/14 206/13 | |
| worked [7] 8/13 32/3 43/9 114/4 124/19 221/6 235/24 | | years [15] 39/21 39/22 40/1 40/3 55/1 62/24 110/16 113/8 125/10 142/6 150/11 150/25 214/5 226/9 247/4 | |
| worker's [1] 233/25 | | yelling [2] 79/9 79/17 | |
| working [17] 53/17 55/5 68/16 69/7 102/7 113/22 120/7 120/17 121/15 121/17 132/18 149/12 179/3 221/7 221/12 246/19 277/20 | | yellow [1] 266/3 Yep [2] 85/2 221/8 yes [329] yesterday [8] 26/24 102/13 242/11 249/23 249/23 251/2 252/2 254/9 | |
| workplace [2] 259/7 259/18 | | yet [12] 4/5 7/3 26/10 30/18 37/24 88/20 99/16 99/22 147/21 149/9 241/9 278/12 | |
| works [2] 114/4 114/5 | | you [1590] | |
| world [1] 56/9 | | you'd [2] 53/5 222/6 | |
| worldwide [1] 142/7 | | you'll [11] 50/10 52/5 75/25 82/23 89/2 92/4 120/11 121/5 123/18 168/23 231/11 | |
| worried [4] 139/17 139/19 140/6 281/3 | | you're [61] 7/16 7/23 7/23 7/24 7/24 10/25 11/11 18/18 19/9 20/4 23/18 24/13 33/11 79/25 81/24 88/1 88/2 89/25 90/10 94/19 95/14 97/18 98/25 99/15 102/16 102/21 106/9 118/17 118/17 126/25 131/12 132/14 134/3 136/12 142/5 143/13 146/20 148/6 148/13 148/14 149/19 150/5 150/11 150/11 150/12 155/8 158/10 163/17 175/12 180/17 184/18 184/21 187/15 190/15 226/25 228/10 232/14 247/15 256/9 268/23 274/21 | |
| worries [1] 141/3 | wouldn't [24] 31/13 42/2 98/6 121/15 134/4 138/19 139/12 141/17 146/18 152/3 153/15 161/10 196/4 196/5 197/7 198/12 198/16 199/21 199/23 202/2 210/10 214/4 238/5 255/6 | you've [30] 12/10 17/1 23/4 24/24 26/19 32/11 35/23 35/23 37/3 41/7 58/16 63/25 70/10 71/21 84/6 127/3 142/18 143/20 152/24 172/21 | |
| worry [8] 17/18 22/11 64/8 191/12 216/18 234/25 236/9 246/12 | | | |
| worse [4] 25/1 25/1 25/3 37/13 | wrist [3] 12/16 12/24 28/4 | | |
| worsened [1] 275/2 | wrists [1] 12/19 | | |
| worst [1] 133/23 | write [11] 28/19 35/15 88/3 133/13 150/23 151/1 186/4 197/8 200/10 200/11 263/6 | | |
| worth [1] 56/12 | writes [8] 16/13 84/9 85/18 85/19 140/21 150/22 162/10 232/1 | | |
| worthy [1] 7/24 | writing [8] 112/13 139/2 183/15 192/10 233/8 234/17 236/18 236/20 | | |
| would [263] 4/17 11/10 19/14 22/22 23/9 23/9 23/10 23/15 26/1 26/21 26/21 29/3 32/13 34/9 34/10 42/2 42/4 42/4 42/13 43/17 46/11 48/2 49/23 50/2 50/5 50/12 52/11 53/13 53/15 54/9 54/14 54/19 54/20 55/12 55/13 55/15 56/13 57/13 59/11 60/8 60/8 60/21 60/24 61/2 61/3 62/14 62/25 62/25 65/1 70/20 72/8 73/12 75/13 75/25 76/5 78/12 78/18 81/13 81/21 81/21 81/24 85/8 85/22 86/20 89/3 90/8 91/5 92/24 93/9 98/3 99/10 100/8 101/4 101/13 101/23 103/23 104/15 106/7 107/7 109/14 111/11 113/12 117/17 119/2 119/4 119/14 120/8 120/8 | written [15] 10/23 32/2 35/13 87/4 95/12 98/1 158/25 195/8 200/19 209/18 210/12 218/4 225/18 225/20 238/14 | | |
| | wrong [18] 14/5 14/12 56/15 68/1 69/12 91/19 91/20 108/7 108/24 139/23 140/3 144/5 166/11 171/3 200/25 204/13 212/8 220/12 | | |
| | wrongly [1] 196/25 | | |

you've... [10] 192/3 192/20
202/19 214/20 222/12 230/15
235/7 242/10 256/7 268/5
you-all [7] 4/3 4/4 5/11
94/16 216/10 225/25 241/21
young [8] 38/17 57/15 140/9
140/10 140/11 153/11 154/8
208/20
your [559]
yourself [13] 108/2 109/15
112/23 121/16 129/21 130/11
133/8 133/14 135/1 135/6
141/4 190/15 236/13
yourselves [1] 241/21

Z

zero [1] 144/23
Zolofit [1] 39/14
zone [4] 58/1 258/3 258/8
258/21